Supreme Court, U.S.
FILED
AUG 29 2005
OFFICE OF THE CLERK

No. 04-52

IN THE SUPREME COURT OF THE UNITED STATES

BERTRAM RICE, Warden, et al., *Petitioners,*

v.

STEVEN MARTELL COLLINS, *Respondent.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JULY 7, 2004
WRIT OF CERTIORARI GRANTED JUNE 28, 2005

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The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Writ of Certiorari:

Opinion of the United States Court of Appeals for the Ninth Circuit, filed November 7, 2003 ..... B 48-89

Order of the United States Court of Appeals for the Ninth Circuit, filed April 29, 2003 ..... C 90

Order of the United States District Court for the Central District of California Approving and Adopting Report and Recommendation of United States Magistrate Judge, filed August 31, 2001 ..... D 91-92

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Report and Recommendation of United States Magistrate Judge of the United States District Court for the Central District of California, filed July 12, 2001 ..... F 95-106

Proposed Order of the United States District Court for the Central District of California Approving and Adopting Report and Recommendation of United States Magistrate Judge, lodged July 12, 2001 ..... G 107-08

Opinion of the Court of Appeal of the State of California, Second Appellate District, Division Three, filed December 12, 1997 ..... H 109-20

U.S. District Court

CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:98-cv-09329-TJH-AN

Steven M. Collins v. Daniel Lungren, et al
Assigned to: Judge Terry J. Hatter
Referred to: Magistrate Judge Arthur Nakazato
Demand: $0
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 11/19/1998
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner
Steven Martell Collins

represented by **Steven Martell Collins**
CDC J-00781
Blythe Ironwood State Prison
P O Box 2199
Blythe, CA 92226
PRO SE

V.

Defendant
Bertram Rice

V.

Respondent
Daniel Lungren

represented by **Erika D Jackson**
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Respondent
Bert Rice
Warden

represented by **Erika D Jackson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DOCKET PROCEEDINGS

Date Filed	#	Docket Text
11/19/1998	1	PETITION FOR WRIT OF HABEAS CORPUS by petitioner Steven Martell Collins in State Custody referred to Magistrate Judge Arthur Nakazato. (jp) (Entered: 11/23/1998)
11/19/1998	2	NOTICE and ORDER of Reference to Magistrate Judge Arthur Nakazato (jp) (Entered: 11/23/1998)
12/03/1998	3	ORDER by Magistrate Judge Arthur Nakazato dismissing the habeas corpus petition [1-1] Petnr hv to 1/4/99 to fi amd petn, petnr s/subm either a properly completed req ifp or the $5 filing fee (dmjr) (Entered: 12/11/1998)
12/23/1998	4	REQUEST by petitioner for ext of ti to fi amd petn. Lodged ord (dmjr) (Entered: 12/29/1998)
01/11/1999	5	AMENDED PETITION FOR WRIT OF HABEAS CORPUS (pbap) (Entered: 01/22/1999)
01/11/1999	6	REQUEST by petitioner Steven Martell Collins to file amd ptn for writ of H/C beyond the crt imposed ddl. (ab) (Entered: 01/25/1999)
01/11/1999		LODGED AMD PTN submitted by respondent Daniel Lungren (FWD TO CRD) (ab) (Entered: 01/25/1999)

01/13/1999 7 MINUTES: denying request for ext of time [6-1] as moot, granting request to file first amd ptn [4-1]; the req to proceed in forma pauperis is GR by Magistrate Judge Arthur Nakazato CR: none (ab) (Entered: 01/25/1999)

01/15/1999 8 ORDER by Magistrate Judge Arthur Nakazato dismissing the habeas corpus petition [5-1] w/out prej and w/lv to amd; if petr wishes to proceed with this matter, he shall have until 2-12-99, to file a second amd ptn tht fully complies with the M&O and this memo and ord. (ab) (Entered: 02/04/1999)

01/29/1999 9 SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS; adding defendant Bertram Rice, Warden (pbap) (Entered: 02/05/1999)

02/05/1999 10 ORDER by Magistrate Judge Arthur Nakazato tht the clk of the crt shall forward cpys of the ptn to respdent and his or her resp and the Atty General of the State of CA; ord tht respdent shall fiel and srv a rtn to the ptn on or bf 4-6-99; fur ord tht respdent shall make a careful exam of the question of exhaustion of state crt remedies. (ab) (Entered: 02/16/1999)

02/24/1999 12 REQUEST by petitioner Steven Martell Collins to expand the record in this h/c prcdng (pbap) (Entered: 03/08/1999)

02/26/1999 11 MINUTES: Ptnr's "Req to Expand the Record in this H/C Prcdngs,' fld 2/25/99 (the Req). Rspdnt shl fi and srv an opp or stmt of non-opp to the Req on or before 3/17/99. Ptnr shl fi and srv any rply on or before 3/31/99. The Req will be tkn under subm as of 3/31/99, and no appr will be necessary by Magistrate Judge

Arthur Nakazato CR: none (pbap) (Entered: 03/03/1999)

03/03/1999 13 NOTICE OF CHANGE Of Address filed by petitioner Steven M. Collins (pbap) (Entered: 03/15/1999)

03/08/1999 14 MINUTES: The Crt is in rcpt of Ptnr's Ntc of Chg of addr ("Ntc"). The Crt notes tht the ptnr's correct addr is as follows (herein) by Magistrate Judge Arthur Nakazato CR: none (pbap) (Entered: 03/15/1999)

03/17/1999 15 STATEMENT of non-opp by respondent to [12-1] (pbap) (Entered: 03/22/1999)

03/23/1999 16 MINUTES: granting request [12-1] by Magistrate Judge Arthur Nakazato CR: none (pbap) (Entered: 03/26/1999)

04/06/1999 17 MOTION by respondent to dismiss 1nd amd petn for W/H/C (pbap) (Entered: 04/09/1999)

05/06/1999 18 OPPOSITION by petitioner Steven Martell Collins to dism second amd ptn for writ of H/C; memo of PA. (ab) (Entered: 05/12/1999)

05/11/1999 19 MINUTES: on 1-29-99, petr fld the pending second amd ptn for writ of H/C raising three grnds for federal habeas relief; respdents fld a mot ot dism the second amd ptn contending tht petr third clm is not exhausted because he failed to assert the federal legal theory upon which his clm is based in his ptn for review to the CA Supreme Crt; petr failed to file an opp to the mot; option 1; req this crt to ent a jgm only on his first and second clms for reilf; option 2 req this crt to dism the pending second amd ptn w/out prej to petr filing a new ptn

once available stat remedies are exhausted; petr shall file and srv on respdents a resp to this ord setting forth his election of either option 1 or option 2 NLT 6-10-99; if petr fails to timely file a resp to this ord, the entire actn will be subject to dismissal w/prej for failure to comply with this crt ord by Magistrate Judge Arthur Nakazato CR: none (ab) (Entered: 05/20/1999)

06/09/1999 20 RESPONSE by petitioner Steven Martell Collins re minutes [19-1] (pbap) (Entered: 06/14/1999)

06/14/1999 21 MINUTES: In the response, petitioner elects to proceed with Option 1 of the crts 5/11/99 minute order. Accordingly, the crt will enter jgm only on petitioners first and second claims for relief, and the unexhausted third claim is deemend stricken from the petition. Respondent shall have until 8/13/99 to serve and file a return addressing the merits of Claims 1 and 2. Petitioner shall have until 9/13/99 to serve and file a traverse addressing matters raised in the return. The ptys papers shall otherwise comply with the crts precious order re further proceedings...filed 2/5/99. by Magistrate Judge Arthur Nakazato CR: N/A (shb) (Entered: 06/16/1999)

07/23/1999 22 NOTICE OF MOTION AND MOTION by petitioner Steven Martell Collins for status report (shb) (Entered: 07/29/1999)

08/06/1999 23 APPLICATION for enlargement of ti to fi the rtn by respondent (pbap) (Entered: 08/10/1999)

08/06/1999 LODGED/PROPOSED ORDER submitted. (FWD TO CRD) (pbap) (Entered: 08/10/1999)

08/09/1999 24 ORDER by Magistrate Judge Arthur Nakazato tht Rspdt is grntd to and includ 9/12/99 to fi a Rtrn. Ptrnis grntd to and includ 10/12/99 to fi and srv a Trav. (pbap) (Entered: 08/16/1999)

08/10/1999 25 MINUTES: granting in part motion for status report [22-1]. On or bef 8/27/99, rspdnt shl fi and srv a stat rpt by Magistrate Judge Arthur Nakazato CR: none (pbap) (Entered: 08/16/1999)

08/27/1999 26 NOTICE by respondent Bert Rice, respondent Daniel Lungren of interested ptys. (ab) (Entered: 09/01/1999)

08/27/1999 27 STATUS REPORT by respondent Bert Rice, respondent Daniel Lungren; exhs. (ab) (Entered: 09/01/1999)

09/13/1999 28 RETURN TO PETITION for Writ of H/C by respondent Bert Rice, respondent Daniel Lungren [9-1] (pbap) (Entered: 09/14/1999)

09/13/1999 29 APPLICATION by respondent Bert Rice for filing under seal and protective order (shb) (Entered: 09/16/1999)

09/13/1999 LODGED/PROPOSED ORDER & 2 confidential reports submitted by respondent Bert Rice for application [29-1]. (FWD TO CRD) (shb) (Entered: 09/16/1999)

09/13/1999 30 NOTICE by respondent Bert Rice of lodging documents (shb) (Entered: 09/16/1999)

09/13/1999 LODGED 1 envelope submitted by respondent Bert Rice (FWD TO CRD) (shb) (Entered: 09/16/1999)

09/16/1999 31 ORDER by Magistrate Judge Arthur Nakazato granting application [29-1]. Ptnr's confidential probation rpt and the sealed Rptr's Transc are hereby filed under seal and are not to be disclosed to persons other than those involved in the pending appl for W/H/C. (pbap) (Entered: 09/27/1999)

09/16/1999 32 Confidential Probation Officer's Rtp filed by respondent ***UNDER SEAL*** (pbap) (Entered: 09/27/1999)

09/17/1999 33 SEALED REPORTER'S TRANSCRIPT filed by respondent ***UNDER SEAL*** (pbap) (Entered: 09/27/1999)

09/29/1999 34 OBJECTIONS by petitioner Steven Martell Collins to [29-1] (pbap) (Entered: 10/01/1999)

09/29/1999 39 REQUEST by petitioner Steven Martell Collins for ext of ti to fi trav (pbap) (Entered: 10/19/1999)

09/29/1999 LODGED/PROPOSED ORDER submitted. (FWD TO CRD) (pbap) (Entered: 10/19/1999)

10/01/1999 35 MINUTES: (In Chambers) by Magistrate Judge Arthur Nakazato: In the Opposition, pet seeks: 1) an ord unsealing pages 66-72 of the Rptr's Transcript (the Sealed Transcript); 2) copies of the Sealed Transcript; and 3) an ord sealing his confidential probation rpt. Pet's FIRST req for an ord unsealing the Sealed Transcript is DENIED. The Crt already ord pet's confidential prob rpt fld under SEAL, so pet's 3rd req is MOOT. Accordingly, on or bef 10/15/99, resp shall file & srv either an opp or a statmnt of non-opp. If resp opp pet's req for a copy of the Sealed Transcript, pet may, on or bef 10/25/99, file & srv a rply. IT IS SO ORD;

CR: n/a (cc: cnsl) (lb) Modified on 10/05/1999 (Entered: 10/05/1999)

10/01/1999 36 ORDER by Magistrate Judge Arthur Nakazato: IT IS ORDERED that Pet is GRANTED to & incl 11/12/99 to file a Traverse to the Pet for H/C. (lb) (Entered: 10/12/1999)

10/08/1999 37 MINUTES: RE: Ptnr's Req for Ext of ti to fi trav fld on 9/29/99. In light of the Crt's 10/1/99 Min Ord, Ptnr Req is GRANTED by Magistrate Judge Arthur Nakazato CR: none (pbap) (Entered: 10/13/1999)

10/15/1999 38 STATEMENT of non-opp to ptnr's req for a copy of sealed transcript by respondent (pbap) (Entered: 10/18/1999)

12/20/1999 40 MOTION by petitioner Steven Martell Collins for status rpt (pbap) (Entered: 12/22/1999)

01/10/2000 41 MINUTES: granting motion for status rpt [40-1] petnr req for copy of sealed trnscrpt is granted, parties are to make no copies of sealed trnscrpt & are to disclose it only to those involved in petn h/c by Magistrate Judge Arthur Nakazato CR: n/a (dmjr) (Entered: 01/12/2000)

02/24/2000 42 TRAVERSE by petitioner Steven Martell Collins to [28-1] (pbap) (Entered: 02/28/2000)

06/15/2000 43 REQUEST (motion) by petitioner Steven Martell Collins for status rpt (pbap) (Entered: 06/21/2000)

06/20/2000 44 MINUTES: (in chambs) Ord granting petnr's request for status rpt fld on 6-15-00 [43-1] by Magistrate Judge Arthur Nakazato CR: none (krpa) (Entered: 06/22/2000)

09/01/2000 45 MOTION by petitioner Steven Martell Collins for osc (pbap) (Entered: 09/07/2000)

09/12/2000 46 MINUTES: (In Chambers) denying petr's motion for osc [45-1] by Magistrate Judge Arthur Nakazato CR: none (kh) (Entered: 09/13/2000)

02/28/2001 47 MOTION by petitioner Steven Martell Collins for decision of petr's writ pet clms (rmi) (Entered: 03/02/2001)

03/12/2001 48 MINUTES (In Chambers): granting petr's motion for decision of petr's writ pet clms [47-1]; the crt anticipates filing a R & R in this matter by the end of 2001; the crt has an extremely heavy caseload & appreciates the ptys' patience; by Magistrate Judge Arthur Nakazato CR: none (rmi) (Entered: 03/15/2001)

07/12/2001 50 REPORT AND RECOMMENDATION issd by US Magistrate Judge Arthur Nakazato (cc: all cnsl) (dw) (Entered: 07/17/2001)

07/13/2001 49 NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Arthur Nakazato and Lodging of Proposed Judgment and Order (cc: all cnsl) (dw) (Entered: 07/17/2001)

08/06/2001 51 OBJECTION by petitioner to Mag Judge's Report and Recommendation [50-1] (dw) (Entered: 08/08/2001)

08/31/2001 52 ORDER by Judge Terry J. Hatter approving and adopting report and recommendation of US Mag Judge [50-1] (SEND) (mt) (Entered: 08/31/2001)

08/31/2001 53 JUDGMENT AND ORDER by Judge Terry J. Hatter: It is h/b adjudged that this actn is dism w/prej for the reasons set forth in the related Mag Judge's report & recommendation; terminating case (MD JS-6) (ENT 8/31/01) (SEND/NTC) (mt) (Entered: 08/31/2001)

10/01/2001 54 NOTICE OF APPEAL by petitioner Steven Martell Collins to 9th C/A from Dist. Court jgm & ord fld 8/31/01 & ent 8/31/01 [53-2] (cc: Steven Martell Collins, St/Atty Gen) COA Pending (app) (Entered: 10/05/2001)

10/01/2001 55 APPLICATION for CERTIFICATE of APPEALABILITY by petitioner Steven Martell Collins (FWD TO CRD) (app) (Entered: 10/05/2001)

10/23/2001 56 ORDER by Judge Terry J. Hatter re: The certificate of appealability is GR. The specific issues satisfy 2253(c)(2) as follows: Whether the petr's rights were violated under Batson v. Kentucky, 476 U.S. 79 (1986), where the prosecutor exercised a peremptory challenge against an African American juror, ostensibly on the grounds of the juror's age & demeanor. [55-1] (cc: all prtys) (ghap) (Entered: 10/30/2001)

11/05/2001 57 CERTIFICATE of Record Transmitted to USCA (cc: all parties) (dlu) (Entered: 11/05/2001)

11/16/2001 58 NOTIFICATION by Circuit Court of Appellate Docket Number appeal [54-1] 01-56958 (weap) (Entered: 11/16/2001)

12/21/2001 59 MOTION by petitioner Steven Martell Collins for leave to appeal in forma pauperis (fvap) (Entered: 05/30/2002)

01/15/2002 60 CLERK'S record on appeal transmitted to Circuit (01-56958) [54-1] vols: 3 (not included doc #44) (weap) (Entered: 01/15/2002)

01/15/2002 61 CLERK'S record on appeal transmitted to Circuit Orig sealed docs #32 & 33. (01-56958) [54-1] (weap) (Entered: 01/15/2002)

01/18/2002 62 ORDER by Judge Terry J. Hatter granting motion for leave to appeal in forma pauperis [59-1] (fvap) (Entered: 05/30/2002)

03/22/2002 63 RECORD on appeal returned from U.S. Court of Appeals re appeal [54-1] vols: 3 & 2 envelopes of underseal doc's. (ghap) (Entered: 03/26/2002)

03/28/2002 64 CC ORDER FROM USCA clk shall svc a copy of this ord by fax on Maria E. Stratton, DFPD, who will locate appt cnsl. The dist crt shall provide this crt with the name & address of appt cnsl by fax w/in 14 days of locating cnsl. 01-56958 (ghap) (Entered: 04/05/2002)

06/03/2002 65 EX PARTE APPLICATION filed by petitioner for an ord to release under seal docs fld in this case to Karyn H. Bucur petr's appointed appellate cnsl; Decl of Karyn H Bucur; Lodged ord (dw) (Entered: 06/05/2002)

06/17/2002 66 ORDER by Magistrate Judge Arthur Nakazato granting ex parte application for an ord to release under seal docs fld in this case to Karyn H. Bucur petr's appointed appellate cnsl [65-1]; (see doc for specifics) (rmi) (Entered: 06/18/2002)

04/28/2003 67 CLERK'S record on appeal transmitted to Circuit (01-56958) [54-1] vols: 3 (Not included document #44) (weap) (Entered: 04/28/2003)

04/28/2003 68 CLERK'S record on appeal transmitted to Circuit original sealed documents (2) numbers 32 & 33 [54-1]. (01-56958) (weap) (Entered: 04/28/2003)

09/17/2003 69 RECORD on appeal returned from U.S. Court of Appeals re appeal [54-1] vols: 1-3; 2 sealed documents. (ghap) (Entered: 09/22/2003)

Docket as of July 8, 2005 11:15 p.m.

GENERAL DOCKET

US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 01-56958 Filed: 11/14/01
Nsuit: 3530 Habeas corpus (Fed)
Collins v. Rice, et al
Appeal from: Central District of California, Los Angeles

- -

Case type information:
1) prisoner petition
2) state
3) habeas corpus

- -

Lower court information:

District: 0973-2 : CV-98-09329-TJH
presiding judge: Terry J. Hatter, Jr., Chief District Judge
court reporter: Dawn Bullock, Court Reporter
Date Filed: 11/19/98
Date order/judgment: 8/31/01
Date NOA filed: 10/1/01
Date of cert pc: 10/23/01

- -

Fee status: in forma pauperis

- -

Prior cases:
None
Current cases:
None

STEVEN MARTELL COLLINS Petitioner - Appellant	Steven Martell Collins # J-00781 [COR LD NTC prs] CSPI - CALIFORNIA STATE PRISON IRONWOOD (BLYTHE) P.O. Box 2199 Blythe, CA 92226-2199 Karyn H. Bucur, Esq. FAX 949/470-1244 949/472-1092 Room #E193 [COR LD NTC cja] KARYN H. BUCUR Attorney at Law 24881 Alicia Parkway Laguna Hills, CA 92653
v.	
BERTRAM RICE Respondent - Appellee	Erika Denice Jackson, Esq. FAX 213/897-2808 213/897-6973 Suite 5000 [COR LD NTC dag] AGCA - OFFICE OF THE CALIFORNIA ATTORNEY GENERAL (LA) 300 S. Spring St. Los Angeles, CA 90013
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA Respondent - Appellee	Erika Denice Jackson, Esq. (See above) [COR LD NTC dag]

STEVEN MARTELL COLLINS

Petitioner - Appellant

v.

BERTRAM RICE; ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

Respondents - Appellees

11/14/01 DOCKETED CASE-ENTERED INCAR-PROSE-APLT. NO CADS. Setting schedule as follows: appellant's opening brief is due 12/24/01; appellees' brief is due 1/23/02,; appellants' reply brief is due 2/6/02; [01-56958] (rmw)

11/14/01 Filed certificate of record on appeal RT filed in DC N/T [01-56958] (rmw)

12/6/01 Filed order (Deputy Clerk: jw) A review of the DC docket reflects that aplt has not paid the filing fees for this appeal. Within 21 days of this order, aplt shall 1, file a motion with this court to proceed ifp; 2, pay the fees or 3, otherwise show cause why the appeal should not be dismissed for failure to prosecute. If aplt fails to comply eith this order, the appeal will be dismissed by the clerk. [01-56958] (wp)

1/3/02 Filed original and 7 copies Appellant Steven Martell Collins opening brief (Informal: no) 29 pages served on 12/21/01 [01-56958] (wp)

1/3/02 Filed Appellant Steven Martell Collins's motion for broader certification of appealability. (MOATT) [01-56958] served on 12/21/01 [4331463] [01-56958] (wp)

1/4/02 Requested District Court casefile. Tina (mu)

1/17/02 Received District Court case file. 3 clerk's records & 2 sealed envelopes.(original) Sent to Tina Price. (sd)

1/18/02 Filed Bertram Rice motion to extend time to file appellee's brief. (MOATT) [01-56958] served on 1/14/02 [4344755] (wp)

1/31/02 Received notification from District Court re payment of docket fee. Motion to proceed in forma pauperis granted. (Date: 1/18/02) (case file) [01-56958] (lu)

2/20/02 Filed Bertram Rice motion to extend time to file appellee's brief. (MOATT) [01-56958] served on 2/14/02 [4372060] (wp)

3/1/02 Filed Appellant Steven Martell Collins's receipt of motion to proceed in forma pauperis. (MOATT) [01-56958] served on 2/26/02 [4374827] [01-56958] (wp)

3/15/02 District court casefile returned. 3 clerk's records & 2 sealed envelopes. ups (sd)

3/25/02 Filed order (William A. FLETCHER, Raymond C. FISHER,): Appellant's motion for boader certification pursuant to 9th Cir. R. 22-1(d) is granted with respect to following issue: whether aplt's Three Strike sentence constitues cruel and unusual punishment as prohibited by the 8th Amendment. The court sua sponte appoints counsel who will be appointed by separate order. The clerk shall serve a copy of this order by fax on Maria E. Stratton, who will locate appointed counsel. The DC shall provide this court with the name and address of appointed counsel by fax within 14 days of locating counsel. The court has rcvd notifcation that the DC has granted ifp status. Accordingly the 12/6/01 order to show cause is discharged. The clerk shall change the docket to reflect aplt's ifp status for this appeal. The

brieifng The briefing schedule as follows: appellant's brief is due 5/20/02; appellees' brief is due 6/24/02, and the reply brief is due 14 days from the service of the answering brief. Respondent's motion for an extension of time are denied as moot. [01-56958] (wp)

5/31/02 Received copy of District Court order filed on May 20, 2002 appointing Karyn H. Bucur, Esq. counsel of record. [01-56958] (dl)

5/31/02 Filed order (Deputy Clerk: dl) Due to the delay in the appointment of counsel, the court sua sponte, resets the briefing schedule. Appellant's opening brief and excerpts of record are due July 1, 2002; appellee's answering brief is due July 31, 2002; the optional reply brief is due within 14 days from service of the answering brief. [01-56958] (dl)

6/3/02 Received Karyn H. Bucur for Appellant Steven Martell Collins letter dated 5/30/02 re: The reason for this letter to the court is to inform the court of a delay in receiving the DC file. (MOATT) [01-56958] (wp)

6/26/02 Filed motion and deputy clerk order: (Deputy Clerk: cag) Appellant's request to reset the briefing schd is granted. The appellants' opening brief due 7/29/02. The appellees' brief due 8/28/02 and the reply brief is due 14 days from the service of the answering brief. (Motion recvd 6/24/02) [01-56958] (wp)

7/25/02 14 day oral extension by phone of time to file Appellant brief. [01-56958] appellants' brief due 8/12/02; appellees' brief due 9/11/02, ; optional reply brief due 14 days from service of answering brief (cb)

8/2/02 Filed motion and deputy clerk order: (Deputy Clerk: tah) The court is recipt of the appellee's motion to stay appellate proceedings pending the USSC's resolution of Lockyer v. Andrade 270 F.3d 743 (9th Cir. 2001) No 01-1127 (cert. granted 4/1/02) and Ewing v. California No. 01-6978, 2002 WL 480176 (U.S. Apr 1, 2002). The motion represents that the request for a stay of proceedings is denied. The current briefing schd remains in place. The appellees are reminded that they may file a future motion for leave to file a supplemental brief regarding the resolution of the cases noted above. denying motion & order staying further action [4496375-1] (Motion recvd 7/29/02) [01-56958] (wp)

8/8/02 Filed original and 15 copies Appellant Steven Martell Collins opening brief (Informal: no) 62 pages and five excerpts of record filed under seal served on 8/6/02 [01-56958] (wp)

9/9/02 Filed motion and deputy clerk order: (Deputy Clerk: tah) The appellee's motion for an extension of time in which to file the answering brief is granted. The answering brief is due 10/11/02. The reply brief is due 14 days from service of the answering brief. (Motion recvd 9/4/02) [01-56958] (wp)

10/15/02 Filed original and 15 copies appellee Attorney General CA's 42 pages brief, 5 supplemental Excerpts under seal. served on 10/11/02 [01-56958] (wp)

10/21/02 Filed motion and deputy clerk order: (Deputy Clerk: tah) The appellee's motion to file the supplemental excerpts of record under seal is granted. The Clerk has filed the supplemental excerpts under seal pursuant to appellee's 9th Cir. Rule 27-13 notice. (Motion recvd 10/15/02) [01-56958] (wp)

12/6/02 Filed order (STAFF ATTY/Deputy Clerk: JN) Proceedings in this case shall be held in abeyance pending the USSC's resolution of Andrade v. Attorney General of Cal., 270F.3d 743 (9th Cir. 2001), cert granted, 122 Ct. 1434 (2002). Within 30 days of the USSC's final decision in Andrade, appellee shall file in this appeal a motion for appropriate relief. [01-56958] (wp)

3/31/03 Calendar materials being prepared. [01-56958] [01-56958] (aw)

4/4/03 CALENDARED: PASA Jun 5 2003 900 am Courtroom 2 [01-56958] (aw)

4/22/03 Filed Bertram Rice motion to withdraw certification (PANEL) [01-56958] served on 4/18/03 [4716514] (wp)

4/24/03 Filed Appellant Steven Martell Collins opposition to appellee's motion to withdraw certification. (MOATT) [4716514-1] served on 4/22/03 [01-56958] (wp)

5/30/03 Filed Steven Martell Collins additional citations, served on 5/30/03. (PANEL) (CASE FILE) [01-56958] (rmw)

6/5/03 ARGUED AND SUBMITTED TO Cynthia H. HALL, Sidney R. THOMAS, Richard A. PAEZ [01-56958] (rmw)

11/7/03 FILED OPINION: REVERSED REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Cynthia H. HALL, dissenting; Sidney R. THOMAS; Richard A. PAEZ, author.) FILED AND ENTERED JUDGMENT. [01-56958] (wp)

11/21/03 [4903003] Filed original and 50 copies Appellee Bertram Rice petition for panel rehearing and petition for rehearing en banc (PANEL AND ALL ACTIVE JUDGES) 11 p.pages, served on 11/20/03 [01-6958] (wp)

12/12/03 Filed order (Richard A. PAEZ,): Appellant is directed to file a response, not to exceed 15 pages, to appellee's petition for rehearing and petition for rehearing en banc filed with this court on 11/21/03. 50 copies of the response shall be filed with the Clerk of Court within 21 days from the date of this order. [01-56958] (wp)

12/31/03 Filed Appellant Steven Martell Collins's response to appellee's petition for rehearing [4903003-1] served on 12/29/03 (PANEL AND ALL ACTIVE JUDGES) [01-56958] (wp)

4/8/04 Filed order and amended opinion (Judges Cynthia H. HALL, Sidney R. THOMAS, Richard A. PAEZ,) (Orig. opinion id: [4889572-1]) The petition for rehearing en banc is denied. See opinion for complete amendments. [01-56958] (ft)

4/12/04 Filed Attorney General CA motion to stay the mandate. (PANEL) [01-56958] [01-56958] served on 4/9/04 [5036029] (wp)

4/29/04 Filed order (Richard A. PAEZ,): Respondent's motion for stay of the mandate is granted. The mandate shall be stayed for 90 days. [5036029-1] [01-56958] (wp)

7/9/04 Rcvd copy of petition for writ of cert. [01-56958] (wp)

7/19/04 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 04-52 filed on 7/13/04. [01-56958] (ca)

7/23/04 Filed aples' Rice mtn for stay of mandate; served on 7/22/04. (PANEL) [01-56958] [5128606] (ea)

7/29/04 Filed order (Richard A. PAEZ,): Respondent's motion for stay of the mandate is granted. The mandate shall be stayed until the USSC's final disposition of respondent's petition for writ of cert. (MOATT) [5128606-1] [01-56958] (wp)

7/5/05 Received notice from Supreme Court, petition for certiorari GRANTED on 6/28/05. Supreme Court No. 04-52 (PANEL & MOATT) (ru)

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN MARTELL COLLINS, *Petitioner-Appellant*, v. BERTRAM RICE; ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, *Respondents-Appellees.*	No. 01-56958 D.C. No. CV-98-09329-TJH ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Chief District Judge, Presiding

Argued and Submitted
June 5, 2003—Pasadena, California

Filed November 7, 2003
Amended April 8, 2004

Before: Cynthia Holcomb Hall, Sidney R. Thomas, and Richard A. Paez, Circuit Judges.

Opinion by Judge Paez;
Dissent by Judge Hall

SUMMARY

Criminal Law and Procedure/Habeas Corpus

The court of appeals reversed a judgment of the district court. The court held that substantial evidence can support a drug offender's contention that the prosecutor dismissed an African American juror because of her race, where the prosecutor's justifications for dismissing the juror on the basis of her age were contrary to the record (likely tolerance of drug offenders), were unrelated to her ability to serve as a juror in the case (lack of community ties), and were not applied equally to white jurors (single with no children); and where one of the prosecutor's justifications was patently discriminatory (gender), while one of her justifications for dismissing another African American was contrary to the record (age).

Appellant Steven Collins petitioned for a writ of habeas corpus in district court under 28 U.S.C. § 2254, alleging that race motivated the prosecutor's peremptory strikes against two African-American women, Juror 016 and Juror 019, a middle-aged grandmother, during jury selection prior to his California state court trial for possession of a controlled substance. The prosecutor offered five reasons for excluding Juror 016: (1) her youth and the possibility that she might be too tolerant for this type of case, (2) her demeanor, (3) her marital status—single with no ties, (4) her lack of ties to the community, and (5) her gender. The prosecutor did not strike a white juror who possessed the same objective characteristics as Juror 016. The trial court rejected the prosecutor's attempt to justify her strike on the basis of Juror 016's gender, but appeared to credit the prosecutor's discussion of Juror 016's youthful age and her alleged demeanor as race-neutral justifications. The prosecutor also struck Juror 019, noting her youth and daughter's former drug problem. The jury found

Collins guilty of the possession charge and also found that Collins had been convicted of robbery and forcible rape in 1982. Accordingly, with three felony convictions, the court sentenced him to a three strikes term of 25 years to life in state prison.

The California Court of Appeal affirmed Collins' conviction and sentence, concluding that the trial court properly accepted the prosecutor's youthful age and demeanor justifications as race-neutral. The California Court of Appeal determined that because the trial court did not observe the prospective juror's demeanor, the trial court permitted the prosecutor to exclude prospective Juror 016 based solely on her age. However, noting that nothing in the present record, including the trial court's decision to give the prosecutor the benefit of the doubt as to prospective Juror 016's demeanor, indicated that the trial court did not approach its task appropriately, the appellate court determined that the trial court's decision was entitled to deference. The California Supreme Court denied both Collins' petition for review and his petition for a writ of habeas corpus. The district court denied Collins' federal habeas petition.

Collins appealed.

[1] The Equal Protection Clause forbids prosecutors from exercising peremptory challenges on the basis of race. [2] Because the trial court determined that Collins had established a prima facie case, the prosecutor was required to articulate a race-neutral explanation. [3] Youthful age and demeanor are not characteristics peculiar to a given race or group-based presuppositions applicable in all criminal trials to African-American jurors. [4] Thus, the California Court of Appeal's determination that age was a race-neutral justification for excusing Juror 016 was not contrary to, or an unreasonable application of, clearly established law.

[5] Although age has been upheld as a proper basis for excusing a potential juror, the prosecutor attempted to equate Juror 016's youthful age with a possible bias favoring criminal defendants facing drug charges. [6] According to the Supreme Court, Juror 016's age had to be related to the particular case to be tried. Instead, the prosecutor's reason for excluding Juror 016 related to the prosecutor's beliefs that Juror 016 might be sympathetic to an individual charged with drug possession and that she lacked ties to the community. [7] Not only was the prosecutor's statement that Juror 016 had a lack of ties in the community not sufficiently clear and reasonably specific, but it was also not supported by the record and did not appear to have any relation to Juror 016's ability to serve as a juror in a criminal trial involving possession of crack cocaine. [8] There was clear and convincing evidence that the prosecutor's stated concern over Juror 016's youthful age was a pretext for discrimination, evidence that the state appellate court did not address in unreasonably concluding that the prosecutor had dismissed Juror 016 on the basis of her age.

[9]There was substantial evidence supporting Collins' contention that the prosecutor dismissed Juror 016 because of her race—evidence that the appellate court failed to address. The trial record demonstrated that the prosecutor's justifications for dismissing Juror 016 on the basis of her age were contrary to the record (likely tolerance of drug offenders), were unrelated to her ability to serve as a juror in Collins' case (lack of community ties), and were not applied equally to white jurors (single with no children). The record also showed that one of her justifications was patently discriminatory (gender), while one of her justifications for dismissing Juror 019 was contrary to the record (age). In sum, the record demonstrated that the prosecutor's proffered reasons for dismissing Juror 016 were wholly implausible, unpersuasive, and a pretext for discrimination on the basis of her race.

[10] Collins thus showed by clear and convincing evidence that the state appellate court's determination, that the prosecutor did not purposefully discriminate on the basis of race in striking Juror 016, was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. [11] Contrary to the appellate court's assessment of the record, the trial court did not fulfill its duty by determining that Collins had failed to prove purposeful discrimination when the prosecutor failed to offer any credible justification for striking Juror 016. The appellate court's contrary determination demonstrated that it unreasonably concluded that the trial court had fulfilled its duty to determine whether Collins had shown purposeful discrimination. [12] It had to be concluded that the state trial appellate court committed constitutional error that warranted the grant of a writ of habeas corpus under § 2254. The judgment of the district court had to be reversed.

Judge Hall dissented, writing that both the majority opinion and the record were devoid of any basis for concluding that the prosecutor's statements and demeanor left the trial judge with no permissible alternative but to reject the prosecutor's race-neutral justifications.

COUNSEL

Karen H. Bucur, Laguna Hills, California, argued the case for the appellant.

Erika D. Jackson, Deputy Attorney General, Los Angeles, California, argued the case for the appellees.

ORDER

The opinion filed November 7, 2003 is AMENDED as follows:

1. Page 15915, line 14: delete "and 019" and change "Jurors" to "Juror."

2. Footnote 12, line 2: after "challenge" insert "because the prosecutor labeled Juror 019 'young' even though Juror 019 was a grandmother."

3. Delete the first full paragraph on page 15917.

4. Delete "her pretextual justifications for dismissing Juror 019," on line 2-3 of the last paragraph on page 15917.

5. The first full sentence on page 15919 should be amended to read: "The record also shows that one of her justifications was patently discriminatory (gender), while one of her justifications for dismissing Juror 019 was contrary to the record (age)."

6. Footnote 15, lines 16-17: change "three reasons were not applied to comparably similar jurors who were not struck" to "one reason was not applied to a comparably similar juror who was not struck."

7. Delete the following from page 15922: ", while her justification based on Juror 019's daughter's past cocaine addiction was pretextual given that a white juror (Juror 030) with comparably similar characteristics was permitted to serve on the jury."

8. Page 15922, line 19: change "Jurors" to "Juror" and delete "and 019".

With these amendments, the panel majority has voted to deny the petition for panel rehearing and petition for rehearing en banc. Judge Hall voted to grant the petition for panel rehearing, and recommended granting the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc reconsideration. FED. R. APP. P. 35.

The petition for rehearing en banc is denied.

BEA, Circuit Judge, with whom KLEINFELD, GOULD, TALLMAN, and CALLAHAN, Circuit Judges, join, dissenting from the denial of rehearing en banc:

I respectfully dissent from the court's denial of the state's petition for a rehearing en banc because the majority opinion seriously undermines the ability of a trial court to judge the sincerity of counsel's reason for a peremptory challenge to a juror when a *Batson/Wheeler*[1] challenge is made.

Collins is an African American who was convicted of possession of 0.1grams of rock cocaine. It was his third felony conviction; he was sentenced to 25 years to life under California's "three strikes" law. The sentence in this case is harsh; from it, the majority opinion makes bad law.

On the basis of the prosecutor's peremptory challenge of *one* African American prospective juror, the majority opinion reverses a denial of habeas corpus and orders a new trial.

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[1] *Batson v. Kentucky*, 476 U.S. 79 (1986); *People v. Wheeler*, 22 Cal. 3d 258, 148 Cal. Rptr. 890, 583 P.2d 748 (1978).

The trial court enquired of and listened to the prosecutor's race-neutral reasons for using a peremptory strike against an African American prospective juror, weighed the evidence both for and against concluding that the strike was racially motivated, and decided the prosecutor was credible and that her reasons for making the strike were indeed race-neutral. The Court of Appeal affirmed.

In reversing this determination on the habeas petition, the majority opinion demeans demeanor evidence and nitpicks the record to find that, as a matter of law, the trial judge cannot find the prosecutor credible if there is evidence in the record to support the opposite conclusion. Instead of reviewing the evidence for clear error the majority conducted a de novo review in this case.

The majority opinion completely disregards the evidence supporting the trial judge's decision that the prosecutor was being truthful when she said she struck Juror 016 on the following permissible grounds: Juror 016 was young; the prosecutor thought Juror 016 appeared too tolerant for this type of case; Juror 016 had exhibited disrespect for the court by turning away and rolling her eyes when requested to answer "Yes" or "No" rather than "Uh-huh"; and Juror 016 was single, with no ties to the community.

The majority says it finds compelling evidence sufficient to overcome the deference it says it accords trial court credibility findings in three particulars: the prosecutor said that Jurors 016 and 019 were both young, when in fact 019 was a grandmother;[2/] the trial judge said he did not personally see Juror

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[2] This was an incorrect observation, but one not objected to or rebutted by defense counsel. From the colloquy it appears that everyone in that room knew the prosecutor meant to compare Juror 016 to Juror 006.

016 roll her eyes in disrespect;[3] and the prosecutor said she was also challenging Juror 016 due to her gender, a ground which the trial judge immediately rejected as unconstitutional.

The prosecutor's statement that Juror 016 rolled her eyes is critical to this case. If someone rolls her eyes when another speaks to her, the eye-rolling implies disrespect and rejection. The panel opinion concluded, irrationally, that because the trial judge did not see the eye-rolling, the state appellate court was unreasonable in approving the prosecutor's strike. The reason this is irrational is that it does not matter whether the state trial judge noticed the eye-rolling, or even whether there actually was any eye-rolling. All that matters is whether the prosecutor intentionally lied about the eye-rolling to make an excuse for getting an African American woman off the jury. If the prosecutor was really striking Juror 016 because she thought the juror rolled her eyes and not because she was African American, she had a right to strike her, even if she was mistaken about whether the eye-rolling actually occurred. In this case, the trial judge thought the prosecutor was telling the truth, and the state appeals court saw no reason to doubt it.

The record is uncontradicted that while the prosecutor was stating her reasons for the exercise of this single challenge, she was at all times within the sight of the trial judge, who observed her demeanor and sincerity. Indeed, at the end of counsel's presentation on the issue, the judge commented he would give the "benefit of the doubt" to the prosecutor's reason for the challenge.

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[3] Defense counsel remained mute as to whether she had seen Juror 016 roll her eyes in disrespect. California law allows the trier of fact to consider the failure to deny or explain contrary evidence as probative of that evidence. *See* CAL. EVID. CODE § 413; Cal. BAJI 2.04.

Without the benefit of the trial judge's observations and on a cold record containing ample evidence supporting the prosecutor's stated reasons for the strike, the majority concludes that the state court's findings amount to a misapplication of *Batson* and an objectively unreasonable deduction from the evidence presented.

That conclusion in effect eliminates the ability of the trial judge to make determinations of sincerity and credibility based on observation of counsel's demeanor in justifying a peremptory challenge. This is directly contrary to the teachings of the Supreme Court:

> In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed. There will seldom be much evidence on that issue, and the best evidence often will be the demeanor of the attorney who exercises the challenge. As with the state of mind of a juror, evaluation of the prosecutor's state of mind based on demeanor and credibility lies "peculiarly within the trial judge's province."

Hernandez v. New York, 500 U.S. 352, 364-65 (1991) (citations omitted).

Although acknowledging *Hernandez*, the majority opinion in effect eliminates the rule that requires us to defer to the trial judge on credibility findings in *Batson* challenges. Now, our panels can pick and choose among bits of circumstantial evidence, whether or not that evidence was challenged at trial or on appeal, to determine whether an attorney was telling the truth in her reasons for peremptory strikes, without regard to

the attorney's demeanor.[4] *See* Judge Hall's dissent. 348 F.3d at 1100.

The value of the trial judge's observation of demeanor in determining credibility has long been a mainstay of our jurisprudence:

> There can be no doubt that seeing a witness testify live assists the finder of fact in evaluating the witness's credibility. As the Supreme Court stated in *Anderson v. City of Bessemer*, 470 U.S. 564, 105 S. Ct. 1504, 84 L. Ed. 2d 518[ ] (1985): "[O]nly the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Id.* at 575, 105 S. Ct. 1504[.] Live testimony enables the finder of fact to see the witness's physical reactions to questions, to assess the witness's voice—matters that cannot be gleaned from a written transcript. Because the district judge is able to hear testimony live and to view the witnesses as they testify, his credibility findings are entitled to deference on appeal.

United States v. Mejia, 69 F.3d 309, 315 (9th Cir. 1995).

The prosecutor represented that she saw Juror 016 roll her eyes in disrespect for the trial court, and the trial judge believed she was truthful. The majority opinion now requires the trial judge to detail why he thought the prosecutor *was*

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[4] This directly conflicts with the California jury instruction that allows juries to consider "the demeanor and manner of the witness while testifying" in determining the believability of a witness. *See* Cal. BAJI 2.20. If juries are allowed to weigh a witness' credibility, there is no logical reason a trial judge cannot do the same.

credible, or else this court will presume she was *not*. Why we should presume a prosecutor, who is an officer of the court, is not credible when the trial judge found that she was is beyond all logic. For a contrary result in a similar case, see *Williams v. Rhoades*, 354 F.3d 1101 (9th Cir. 2004), which properly accorded deference to the trial judge's findings in a *Batson* challenge.

In addition, the panel's opinion, although citing 28 U.S.C. § 2254(d), departs from the spirit, if not the letter, of the statute in its application of the statute to the facts in this case. As noted, the panel substitutes its own inferences drawn from the cold record for the perspectives of the trial court and the state appellate court. The panel then insists that any perspective other than its own, must be unreasonable. In my opinion, this is not consistent with the statute's limitation of federal habeas relief to instances where the state court decision "was contrary to, or involved an unreasonable application of clearly established Federal law," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

En banc rehearing was necessary to avoid arguments between counsel battling over whether the standard in *Collins* or the standard in *Williams*[5] applies. Those battles will now rage with no end in sight. Accordingly, I respectfully dissent from the denial of rehearing en banc.

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[5] *See Williams v. Rhoades*, 354 F.3d 1101 (9th Cir. 2004) where three African Americans were struck, habeas relief denied, and that denial affirmed by this court.

OPINION

PAEZ, Circuit Judge:

Steven Collins appeals the district court's order denying his 28 U.S.C. § 2254 petition for a writ of habeas corpus. During jury selection prior to his state court trial for possession of a controlled substance, Collins, an African-American male, alleged that race motivated the prosecutor's peremptory strikes against two African-American women in the jury venire in violation of *People v. Wheeler*,[1] but the state trial court rejected Collins' *Wheeler* motion. The jury found him guilty of the possession charge and also found that Collins had been convicted of robbery and forcible rape in 1982. Accordingly, with three felony convictions, the court sentenced him to a three strikes term of twenty-five years to life in state prison.[2] The California Court of Appeal affirmed his conviction and sentence, and the California Supreme Court denied both Collins' petition for review and his petition for a writ of habeas corpus.

We have jurisdiction pursuant to 28 U.S.C. § 2253, and we conclude that the California Court of Appeal's decision that the prosecutor did not engage in purposeful discrimination during jury selection represents (1) an unreasonable determination of the facts in light of the evidence presented at trial, and (2) an objectively unreasonable application of clearly established law. Accordingly, we reverse with instructions to grant the petition.

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[1] 22 Cal. 3d 258 (1978).

[2] *See* Cal. Penal Code Ann. § 667(e)(2)(A) (West 1999).

BACKGROUND

After Collins was discovered in possession of 0.10 grams of powder cocaine in March 1996, the State of California charged him with possession of a controlled substance in violation of California Health and Safety Code section 11350(a). When jury selection began, the trial court excused ten of the original thirty-three members of the venire. Of the remaining twenty-three, three appeared to be African-American.[3]

During voir dire, Juror 016, one of two African-American women in the venire, stated that she lived in Inglewood, California, was single, had no children, no prior jury experience, no prior employment experience in law enforcement, and worked as an automations clerk for the Federal Aviation Administration. She also stated that no one close to her had ever been accused of a drug-related offense, nor had anyone close to her had a problem with alcohol or drugs, and that she had no reason to believe that drug dealers operated in her neighborhood. When asked whether she thought that possession of rock cocaine ought to be against the law, she answered "yes." Juror 016 also told the court that there was nothing about the nature of the charge of possession of rock cocaine that might make it difficult for her to sit on a case involving drug charges. The prosecutor exercised a peremptory challenge to excuse Juror 016.

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[3] At a later point in the proceeding, the prosecutor argued that there were in fact four African-American jurors in the venire. She identified one female juror as being "of African-American color, black color," but defense counsel clarified that although she was a "woman of color," this juror was not in fact African-American.

Juror 019, the other African-American woman in the venire, told the court that she lived in Inglewood, California, was single with seven grown children,[4] and was currently a retired nurse. She also stated that she had no relatives or close friends in law enforcement and had never had an experience with a police officer that was "particularly positive or particularly negative." At one time, her youngest daughter had a problem with drugs. Juror 019 had no idea what kind of drugs but thought that it might have been cocaine. Juror 019 stated that she "was involved in" her daughter's struggle with addiction and "had to help her," but that she did not think that anything about her relationship with her daughter or the daughter's cocaine problem would affect her ability to be fair and impartial in Collins' case.

After the prosecutor exercised another peremptory challenge to excuse Juror 019, defense counsel made a motion pursuant to *People v. Wheeler*, 22 Cal. 3d 258,[5] alleging that the prosecutor had improperly dismissed Jurors 016 and 019 on the basis of race. The trial court determined that Collins had established a prima facie case of racial discrimination and

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[4] When asked to provide her children's occupations, Juror 019 stated that "[t]he oldest one is a computer manager for a company in Van Nuys. Another one is a clinical social worker, works for herself now. One son has his own mechanic shop; one does not work. The other one is in Arizona working for McDonnell Douglas. The youngest is at home with five kids."

[5] *Wheeler* is the "California analogue" to *Batson v. Kentucky*, 476 U.S. 79 (1986). *Lewis v. Lewis*, 321 F.3d 824, 827 n.5 (9th Cir. 2003). Although aspects of *Wheeler* differ from *Batson*, notably the requirements for establishing a prima facie case of discrimination, *see Copperwood v. Cambra*, 245 F.3d 1042, 1046-47 (9th Cir. 2001), the state trial court's finding that Collins established a prima facie case is not in dispute. Because the relevant aspects of the two cases are the same, and because we are reviewing Collins' petition for a writ of habeas corpus under 28 U.S.C. § 2254, we refer to *Batson* in analyzing his claims.

thus asked the prosecutor to justify her peremptory challenges. The prosecutor responded:

> Ms. 016 as well as Ms. 019 were both young and I was concerned with them being too tolerant of this type of case. Also, Ms. 016 made a remark when the judge made a response to her comment "uh-huh," she turned away and rolled her eyes. I don't think you asked her specifically to give a yes or no, but she went "yes," and rolled her eyes and turned away from the court. She and Mr. 006 were both single, no ties.
>
> [Defense Counsel]: Who is 006?
>
> [Prosecutor]: He is the white juror. That was the reason, the justification, for excusing her, rather than her being an African-American. 019, she also had a daughter having a drug problem and she talked about not knowing much about what drug it was, things like that. She was not sufficiently educated in some areas to decide a case like this. But it is beyond any of her experience.

The judge, outside the presence of the prospective jurors, asked the prosecutor if she had any additional justifications to offer for striking the two African-American female jurors. The following colloquoy took place:

> [Prosecutor]: I was the one to bring to the court's attention that the two African-American jurors that were excused were both female and the defendant is a male and there is a male African-American on the jury that has been on it since the beginning, I believe, of this case, of the jury panel that were seated. And there is a second female juror that is of

African-American color, black color, on the jury, still seated. That is it, your honor, at this point. Does the court need cases for those types of reasons as being upheld in other courts, age and gender and inexperience with a certain subject area?

The Court: I'll let you know. [Defense counsel], would you like to be heard?

[Defense counsel]: Yes. [Prosecutor] has talked about looking for more male/female balance. I thought the court was asking each of these potential jurors if they could be fair. And I don't think that should be decided upon their gender. [Prosecutor] has compared Ms. 016 to Mr. 006, who she excused by saying they are both young and she didn't feel she was getting enough information. If she wanted more information, she could have asked the court to ask more questions of Ms. 019 . . . .

The Court: [Prosecutor], do you have any authority to cite to the court that gender is not a suspect classification in the usage of peremptory challenges?

[Prosecutor]: I don't have exact citations here for the court, but *People v. Ortega*, which also talks about the jury being balanced between young and old and men and women.

. . .

The Court: I recall the United States Supreme Court saying the use of peremptory challenges based on gender is improper. I don't see, [Prosecutor], that you are seeking to justify excusing people of one

> ethnicity based on their gender. I don't think that is going to cut it.
>
> [Prosecutor]: I think I tied that into a lack of ties in the community with both of them; that that was one factor that I considered, that is, the manner in which I stated that they could—that their youth was important. It was not that I don't want any young people on the jury. There are, I believe, other young people on the jury.

After considering these arguments, the court denied the *Wheeler* motion. With regard to Juror 019, the court stated that it was "satisfied that at least one race and gender neutral explanation was offered for the exercise of that peremptory challenge, that being Ms. 019's experiences with a family member who had a drug problem." As to Juror 016, the court stated that it, "frankly, did not observe the demeanor of Ms. 016 that was complained of by the district attorney. However, Ms. 016 was a youthful person, as was 006. And one or more other prospective jurors also. The court is prepared to give the district attorney the benefit of the doubt as to Ms. 016."

After sentencing, Collins appealed his conviction and properly exhausted his remedies in both the California Court of Appeal and the California Supreme Court. Collins challenged the trial court's denial of his *Wheeler* motion only with respect to Juror 016. On November 19, 1998, Collins filed a petition for writ of habeas corpus in federal district court pursuant to 28 U.S.C. § 2254. Ultimately, the district court dismissed his petition. Noting that the trial court had not observed Juror 016's demeanor, the district court concluded that it had to respect the trial court's decision to give the prosecutor the benefit of the doubt because Collins had not rebutted this decision with "clear and convincing evidence." The district court subsequently granted Collins' request for a cer-

tificate of appealability as to "[w]hether the petitioner's rights were violated under *Batson v. Kentucky* . . . where the prosecution exercised a peremptory challenge against an African-American juror ostensibly on the ground of the juror's age and demeanor."

I.

Because the California Supreme Court denied Collins' petition for review without comment, our analysis begins with the decision of the California Court of Appeal, an unpublished disposition. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991); *Shackleford v. Hubbard*, 234 F.3d 1077, 1079 n.2 (9th Cir. 2000). In affirming the trial court's ruling, the state appellate court adopted the reasons cited by the trial court; thus, our analysis "will necessarily include discussion of the trial court's decision as well." *Lewis*, 321 F.3d at 829.

The California Court of Appeal determined that "because the trial court did not observe the prospective juror's demeanor, the trial court permitted the prosecutor to exclude prospective [J]uror [N]o. 016 based solely on her age." Citing both *Wheeler* and *Batson*, the state appellate court further rejected Collins' contention that age was an improper basis upon which to justify a peremptory challenge, noting that age groups are not a cognizable class and that peremptory challenges to "youthful and/or immature prospective jurors repeatedly have been upheld as proper." Even assuming that the prosecutor's reliance on Juror 016's young age was improper, the appellate court alternatively concluded that the trial court had engaged in a sincere and reasoned attempt to evaluate the prosecutor's justification, as "[j]urors may be excused on 'hunches' and even 'arbitrary' exclusion is permissible, so long as the reasons are not based on impermissible group bias." Noting that "nothing in the present record, including the trial court's decision to give the prosecutor the benefit of the doubt as to prospective [J]uror [N]o. 016's

demeanor, indicates that the trial court did not approach its task appropriately," the appellate court determined that the trial court's de ision was entitled to deference.

We review Collins' petition according to the standards set forth in the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), as Collins filed his petition after April 24, 1996. We may only reverse a judgment of the state that was adjudicated on the merits if the state's decision was based on an objectively unreasonable determination of the facts in light of the evidence presented in the state court proceeding, 28 U.S.C. § 2254(d)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct. 1029, 1041 (2003), or if the state court's decision was "contrary to, or involve[s] an unreasonable application of, clearly established Federal law" as determined by "the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision," *Andrade*, 123 S. Ct. at 1172 (citations omitted). We further note that the ultimate determination of whether the prosecutor evidenced an intent to discriminate in dismissing Juror 016 is a question of fact, *see Hernandez v. New York*, 500 U.S. 352, 367 (1991), and that under section 2254, "a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). Collins therefore must prove that the state court's decision was " 'objectively unreasonable' in light of the record before the court." *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1045.

II.

[1] The Equal Protection Clause forbids prosecutors from exercising peremptory challenges on the basis of race. *Batson*, 476 U.S. at 89. Where a defendant asserts that a prosecutor's

peremptory challenges were racially-motivated, a court must apply a three-step process for evaluating a *Batson* claim. *Hernandez*, 500 U.S. at 358-60. First, the defendant must make a prima facie showing that the prosecutor exercised a peremptory challenge on the basis of race. *Id.*[6] Once a prima facie case is established, the burden shifts to the state to articulate a race-neutral explanation for the challenge. If the first two steps are satisfied, the court must then determine whether the defendant has carried his ultimate burden of proving purposeful discrimination.

A.

[2] Because the trial court determined that Collins had established a prima facie case, the prosecutor was required to articulate a race-neutral explanation—an explanation "based on something other than the race of the juror." *Hernandez*, 500 U.S. at 360; *see also Purkett v. Elem*, 514 U.S. 765, 767 (1995) (per curiam). In assessing the race-neutrality of the prosecutor's explanation, we "must determine whether, assuming the proffered reasons for the peremptory challenges are true, the challenges violate the Equal Protection Clause as a matter of law." *Hernandez*, 500 U.S. at 359. At this step, "the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race-neutral." *Stubbs v. Gomez*, 189 F.3d 1099, 1105 (9th Cir. 1999) (internal quotation marks omitted). Although the prosecutor must give a " 'clear and reasonably specific' explanation of his 'legitimate' reasons" and "the reason must be 'related to the

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[6] We need not address the preliminary issue of whether Collins made a prima facie showing because the trial court ruled on the ultimate question of intentional discrimination under steps two and three of the *Batson* analysis. *Hernandez*, 500 U.S. at 359; *United States v. Gillam*, 167 F.3d 1273, 1278 (9th Cir. 1999).

particular case to be tried,' " *Purkett*, 514 U.S. at 768-69 (quoting *Batson*, 476 U.S. at 98 & n.20), "it is not until the *third* step that the persuasiveness of the justifications becomes relevant." *Id.* at 768. For purposes of step 2, the prosecutor's explanation need not be "persuasive, or even plausible." *Id.*

The prosecutor offered five reasons for excluding Juror 016: (1) her youth and the possibility that she might be "too tolerant for this type of case," (2) her demeanor, (3) her marital status—"single" with "no ties," (4) her lack of ties to the community, and (5) her gender.[7] The trial court rejected the prosecutor's attempt to justify her strike on the basis of Juror 016's gender, but appeared to credit the prosecutor's discussion of Juror 016's youthful age and her alleged demeanor as race-neutral justifications. The California Court of Appeal concluded that the trial court properly accepted the prosecutor's youthful age and demeanor justifications as race-neutral.

[3] Although Collins concedes that the prosecutor's explanations for striking Juror 016 "may appear to be race-neutral on their face," citing *United States v. Bishop*, 959 F.2d 820, 825 (9th Cir. 1992), he contends that rolling of the eyes, lack of ties in the community, and youthful age are not characteristics that would affect a juror's approach to a specific trial and therefore the prosecutor's explanations were "transparent proxies for racism." However, as Collins acknowledges, "[a]t this step of the inquiry, the issue is the *facial validity* of the prosecutor's explanation," *Hernandez*, 500 U.S. at 360 (emphasis added), and, unlike the justifications offered in *Bishop*, 959 F.2d at 825, youthful age and the demeanor in question are not characteristics peculiar to a given race or

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[7] As evidence that she did not dismiss Jurors 016 and 019 because of their race, the prosecutor also noted that an African-American man and "a female juror that is of African-American color, black color" remained on the panel.

"group-based presuppositions applicable in all criminal trials" to African-American jurors. *Id.*

[4] Further, neither the Supreme Court nor any circuit has held that the Equal Protection Clause prohibits a prosecutor from striking potential jurors on account of age. *United States v. Pichay*, 986 F.2d 1259, 1260 (9th Cir. 1993); *United States v. Jackson*, 983 F.2d 757, 762 (7th Cir. 1993). Thus, the California Court of Appeal's determination that age was a race-neutral justification for excusing Juror 016 is not contrary to, or an unreasonable application of, clearly established law. Alternatively, if the prosecutor had excluded Juror 016 because of her demeanor, this justification would not constitute a denial of equal protection, as discriminatory intent is not inherent in the prosecutor's explanation. *Hernandez*, 500 U.S. at 360. Because we find no error in the California Court of Appeal's analysis at step 2, we proceed to step 3.

B.

In the third step of a *Batson* challenge, the trial court has "the duty to determine whether the defendant has established purposeful discrimination," *Batson*, 476 U.S. at 98, and therefore must evaluate the "persuasiveness" of the prosecutor's proffered reasons, *see Purkett*, 514 U.S. at 768. In determining whether the defendant has carried this burden, the Supreme Court provides that "a court must undertake 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.' " *Batson*, 476 U.S. at 93 (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)); *see also Hernandez*, 500 U.S. at 363. "[I]mplausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." *Purkett*, 514 U.S. at 768; *see also Lewis*, 321 F.3d at 830 ("[I]f a review of the record undermines the prosecutor's

stated reasons, or many of the proffered reasons, the reasons may be deemed a pretext for racial discrimination.")

In the end, a finding of discriminatory intent turns largely on the trial court's evaluation of the prosecutor's credibility, *see Batson*, 476 U.S. at 98 n.21, because "[t]he credibility of the prosecutor's explanation goes to the heart of the equal protection analysis," *Hernandez*, 500 U.S. at 367. Indeed, "[i]n the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed." *Id.* at 365. "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040. Although we afford great deference to the trial court's observations of the prosecutor's demeanor and intent, "[d]eference does not by definition preclude relief." *Id.* at 1041; *see also Lewis*, 321 F.3d at 821 ("The proffer of various faulty reasons and only one or two otherwise adequate reasons, may undermine the prosecutor's credibility to such an extent that a court should sustain a *Batson* challenge."); *United States v. Chinchilla*, 874 F.2d 695, 698-99 (9th Cir. 1989) (holding that although reasons given by a prosecutor "would normally be adequately 'neutral' explanations taken at face value, the fact that two of the four proffered reasons do not hold up under judicial scrutiny militates against their sufficiency"); *Johnson v. Vasquez*, 3 F.3d 1327, 1331 (9th Cir. 1993) (noting that courts are not required to accept neutral reasons that are either unsupported by the record or are refuted by it).

In assessing the prosecutor's proffered justifications for excluding Juror 016, the state trial and appellate courts made unreasonable factual determinations in light of the evidence presented in the state court proceeding and unreasonably

applied clearly established federal law as determined by the Supreme Court. With a careful eye towards "such circumstantial and direct evidence of intent as [was] available" to the appellate court, *Batson*, 476 U.S. at 93 (internal quotation marks omitted), we address each of the justifications relied upon by the California courts.

1. Age

The state court of appeal determined that the prosecutor had dismissed Juror 016 solely on the basis of her age. The court explained that because youth was not a cognizable class for purposes of the cross-section rule and because youth had been recognized as a permissible justification for dismissal in the past, Collins had failed to demonstrate purposeful discrimination. However, the appellate court's conclusion is troubling in several respects.

[5] First, although age has been upheld as a proper basis for excusing a potential juror, *see Pichay*, 986 F.2d at 1259, here, the prosecution explained that Juror 016's youthful age might make her "too tolerant for this type of case." Thus, the prosecutor attempted to equate her youthful age with a possible bias favoring criminal defendants facing drug charges. The prosecutor also later explained that Juror 016's youthful age was "important" because of her "lack of ties in the community," stating, "I think I tied that into a lack of ties in the community with both [Juror 016 and 019]; that was one factor that I considered, that is, the manner in which I stated that they could — that their youth was important."

[6] According to the Supreme Court, Juror 016's age must be "related to the particular case to be tried," *Batson*, 476 U.S. at 98, and must have some relevance to Juror 016's "possible approach to a specific trial," *Bishop*, 959 F.2d at 825. Indeed, although the prosecutor claimed that Juror 016's youthful age was of concern, she later explained that it was *not* the general

presence of young jurors on the jury that concerned her. Rather, in referring to Jurors 016 and 019, the prosecutor stated "[i]t was not that I don't want any young people on the jury. There are, I believe, other young people on the jury." Thus, in explaining that she was not trying to exclude all young jurors from the jury, the prosecutor clarified that her reason for excluding Juror 016 was not her youthful age at all. Instead, her reason for excluding Juror 016 related to particular characteristics that the prosecutor associated with her youth—namely, the prosecutor's beliefs that Juror 016 might be sympathetic to an individual charged with drug possession and that she lacked ties to the community.[8]

The state court of appeal, however, glossed over the prosecutor's clarification and found that the sole basis upon which the trial court had permitted the prosecutor to exclude Juror 016 was her age. It concluded that because the exclusion of jurors on the basis of their age did not violate the Fourteenth Amendment, Collins had failed to meet his burden of proving purposeful discrimination. However, the state appellate court's characterization of the prosecutor's reason for striking Juror 016 was "based on an unreasonable determination of the facts in light of the evidence presented in the State court pro-

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[8] The fact that the trial court acknowledged that Juror 016 "was a youthful person, as was 006[, a]nd one or more other prospective jurors also," is of no moment. Although the trial court seemed to credit the prosecutor's proffered youthful age justification by a cross-racial comparison of youthful jurors who were excused (the record implies that Juror 006 was not a member of a racial minority), the court ignored the prosecutor's clarification that she did not strike Juror 016 because of her "youth," but rather because Juror 016 may have been "too tolerant for this type of case."

We further note that the record contains no information regarding Juror 016's age, save the trial court judge's statement that Juror 016 "was a youthful person, as was 006." Although the trial court is certainly in the best position to view demeanor, credibility, and other intangibles in the courtroom, age is an objective fact that is not so easily discerned by appearance. Thus, the record fails to establish just how old Juror 016 might have been.

ceeding." 28 U.S.C. § 2254(d)(2). Indeed, the evidence in the trial record is clear and convincing that the prosecutor's proffered justifications for striking Juror 016 on the basis of her youthful age—possible tolerance of drug use and lack of ties to the community—were pretexts for purposeful discrimination.

With regard to Juror 016's possible tolerance,[9] during voir dire, Juror 016 answered "yes" to the court's question regarding whether she believed that possession of cocaine should be against the law, and she also told the court that there was nothing about the nature of the charge of possession of rock cocaine that might make it difficult for her to sit on Collins' case. There is no other evidence in the record that remotely suggests that Juror 016 was otherwise sympathetic to or tolerant of individuals involved with drug use or possession. Juror 016 told the court that neither she nor her family members or any of her close friends had ever had a problem with drugs or alcohol; nor had they ever been accused of committing a crime involving illegal drugs. No other information regarding drug use, drug laws, or criminal enforcement of drug laws was solicited by the court or counsel, and Juror 016 never gave the court any information regarding her age. The prosecutor's clarification that Juror 016 might be "too tolerant for this type of case" as a basis for striking Juror 016 is therefore contrary to the evidence in the record. *See Purkett*, 514 U.S. at 768 ("[I]mplausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination."); *McClain v. Prunty*, 217 F.3d 1209, 1221 (9th Cir. 2000) (rejecting prosecutor's attempt to attribute to chal-

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[9] Although the fact that Juror 016's purported tolerance "corresponds to a valid for-cause challenge [helped] demonstrate its race-neutral character" at step 2, *Hernandez*, 500 U.S. at 363, the fact that nothing in the record supports the prosecutor's claim erodes the credibility of her explanation at step 3.

lenged juror "beliefs that she did not hold" about "mistrust[-ing] the system," where juror never made such a statement and indicated to the court that she did believe her son had been treated fairly by "the system").

The prosecutor later attempted to explain that Juror 016 was "single, no ties," presumably indicating that she was not married and possibly had no children. However, as we have already explained, *Batson* is clear that the prosecutor's proffered justifications must be reasonably "related to the particular case to be tried." 476 U.S. at 98; *see also Bishop*, 959 F.2d at 825 (stating that a prosecutor's reason for dismissing a potential juror must have some nexus to her "possible approach to a specific trial"). The trial court record fails to establish how Juror 016's marital or parental status would have had any bearing on her ability to serve as a juror in a case involving prosecution for crack cocaine possession, and the prosecutor failed to offer any such explanation. Further, the record shows that the prosecutor did not strike Juror 015, a white juror who possessed the same objective characteristics as Juror 016: both were single, employed females with no children who responded to the court's questions in the same manner, thereby revealing the pretextual nature of this justification.[10] *See United States v. Alanis*, 335 F.3d 965, 969 (9th Cir.

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[10] The prosecutor attempted to prove the race-neutral character of this justification by comparing Juror 016 with Juror 006, a white male, noting "[s]he and Mr. 006 were both single, no ties." *See Turner v. Marshall*, 121 F.3d 1248, 1251-52 (9th Cir. 1997) ("A comparative analysis of jurors struck and those remaining is a well-established tool for exploring the possibility that facially race-neutral reasons are a pretext for discrimination."). The record reveals, however, that Jurors 016 and 006 had very different backgrounds and thus did not possess "comparable characteristics" for purposes of the cross-racial analysis discussed in *Turner*. Juror 006, like Juror 016 was single, but, in contrast to Juror 016, Juror 006 had never been employed and, significantly, had an uncle who was a recovered alcoholic. This evidence is inconsistent with the prosecutor's assertion that there was a white juror with comparable characteristics who was dis-

2003) ("Peremptory challenges cannot be lawfully exercised against potential jurors of one gender unless potential jurors of another gender with comparable characteristics are also challenged."); *Lewis*, 321 F.3d at 832-33 ("[A] comparative analysis of D.F. with empaneled jurors reveals that a finding of pretext was warranted."); *McClain*, 217 F.3d at 1221-22 (holding that where a non-black juror with no prior jury experience was empaneled, the proffered reason for striking a black juror for lack of jury experience was not genuine and therefore was pretextual); *cf. Miller-El*, 537 U.S. 322, 123 S. Ct. at 1043 (noting the fact that "three of the State's proffered race-neutral rationales for striking African-American jurors pertained just as well to some white jurors who were not challenged" showed that the strikes "might have been selective and based on racial considerations").

[7] The prosecutor also claimed that Juror 016's youth was "important" because of her "lack of ties in the community," stating, "I think I tied that into a lack of ties in the community with both [Juror 016 and Juror 019]; that was one factor that I considered, that is, the manner in which I stated that they

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missed for being single with no children. *Compare Burks v. Borg*, 27 F.3d 1424, 1429 (9th Cir. 1994) (holding that counsel may treat minority and nonminority jurors differently when there are subjective differences between them, although that party cannot insulate an explanation from appellate review simply by couching it in "vague and subjective terms") *with Turner*, 121 F.3d at 1251-52 (perceiving no basis to distinguish a challenged and unchallenged juror and holding that their similarity provided evidence of pretext); *cf. United States v. Lewis*, 837 F.2d 415, 417 & n.5 (9th Cir. 1988) (concluding that there was no evidence of pretext when the decision to strike the juror turned on "the interplay of various factors" identified by the prosecutor and "no unchallenged juror possessed all the cited characteristics").

We further note that, contrary to the suggestion made by the dissent, because Jurors 006 and 016 did not possess comparable characteristics, the comparison between the two did not provide a potential reason for the trial court to conclude that the prosecutor was credible.

could — that their youth was important." Not only is the prosecutor's statement that Juror 016 had a "lack of ties in the community" not sufficiently "clear and reasonably specific," *Batson*, 476 U.S. at 98 n.20, but it is also not supported by the record and does not appear to have any relation to Juror 016's ability to serve as a juror in a criminal trial involving possession of crack cocaine. *See id.* at 88 (holding that the prosecutor's exercise of peremptory challenges must be "related to his view concerning the outcome") (internal quotation marks omitted); *McClain*, 217 F.3d at 1223 (stating that where the prosecutor did not explain the significance of a juror's body language, the prosecutor's claim that he struck that juror "on the sole basis that she had her elbow on the chair is patently frivolous," especially where no other evidence in the record indicated any possible bias).

[8] In sum, there was clear and convincing evidence that the prosecutor's stated concern over Juror 016's youthful age was a pretext for discrimination, evidence that the state appellate court did not address in unreasonably concluding that the prosecutor had dismissed Juror 016 on the basis of her age. This evidence supports Collins' claim that the prosecutor struck Juror 016 because of her race, and also demonstrates that the state appellate court was unreasonable when it determined that the trial court did not err by determining that Collins had failed to prove purposeful discrimination. However, because the appellate court offered Juror 016's demeanor as an alternative explanation, we must assess whether the court unreasonably determined that the trial court had properly accepted that justification as nondiscriminatory before determining the ultimate significance of the appellate court's conclusion regarding Juror 016's age.

2. Demeanor

The state court of appeal also concluded that even if the prosecutor's reliance on Juror 016's youthful age had been improper, the "prosecutor reasonably could have interpreted prospective [Juror 016's] body language as indicative of hostility or disrespect" and properly dismissed her on that basis. Although the trial court did not witness Juror 016's alleged offensive conduct, the appellate court determined there was "*nothing* in the present record" indicating that the trial court should not have given the prosecutor the benefit of the doubt or that it had failed to evaluate whether the prosecutors' justifications should have been accepted.

As the record reflects, the state appellate court reasonably determined that the trial court had not observed Juror 016's demeanor but nonetheless accepted this alternate reason for striking Juror 016 on the basis of the prosecutor's credibility. Because the trial court did not observe Juror 016's demeanor, the critical question here is whether the appellate court's determination that the trial court properly credited the prosecutor's representation was unreasonable.[11/] Notably, the basis

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[11] In response to the prosecutor's characterization of Juror 016's alleged conduct, the trial court responded: "the court, frankly, did not observe the demeanor of Ms. 016 that was complained of by the district attorney." In light of the trial court's statement and the fact that there is nothing in the trial transcript (except the prosecutor's representation) which indicates that Juror 016 answered any question by stating "uh-huh" or that she had rolled her eyes or turned away, the appellate court reasonably determined that the trial court had accepted the prosecutor's statements about Juror 016's demeanor as true. Its corresponding conclusion—that a peremptory challenge exercised on the basis of a juror's body language would not be improper—was also reasonable. *See Burks*, 27 F.3d at 1429 & n.3 (noting that trial counsel's evaluation of a potential juror's demeanor, tone, and facial expressions may lead to a "hunch" or "suspicion" that the juror might be biased, and that a peremptory challenge based on this reason would be legitimate); *United States v. Power*, 881 F.2d 733, 740 (9th Cir.

for the state appellate court's determination was its conclusion that there was "nothing in the present record" to indicate that the trial court did not conduct a searching inquiry in giving the prosecutor the benefit of the doubt or should have questioned the prosecutor's credibility. We conclude that this determination was an unreasonable determination of the facts because the prosecutor failed to offer any credible justification for striking Juror 016.

First, we note that the prosecutor consistently identified Jurors 016 and 019 as "both young."[12] However, the record reveals that Juror 019 was at least a middle-aged grandmother. Indeed, Juror 019 informed the court that she was a retired nurse with seven grown children, the youngest of which had five children of her own. A prosecutor supplied with this information could not credibly identify Juror 019 as young. This incorrect factual statement supports Collins' argument that the prosecutor was not credible. *See McClain*, 217 F.3d at 1222 (holding that reasons for excusing black jurors that were objectively contradicted by the record pro-

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1989) (accepting as legitimate the government's explanation that a juror's "fidgeting and looking around as he sat in the jury box . . . made the prosecutor believe that the individual would not be an attentive juror").

[12] Although Collins does not challenge the prosecutor's strike against Juror 019, this strike is relevant to Collins' *Batson* challenge because the prosecutor labeled Juror 019 "young" even though Juror 019 was a grandmother. *See Hernandez*, 500 U.S. at 363 (holding that a prosecutor's motive "may often be inferred from the totality of relevant facts") (internal quotation marks omitted); *Purkett*, 514 U.S. at 768-69 (holding that at step three, the trial court must evaluate the persuasiveness of the prosecutor's justification); *Batson*, 476 U.S. at 98 (holding that the trial court must decide whether the prosecutor's explanation for the strike is pretextual); *United States v. Hill*, 146 F.3d 337, 342 (6th Cir. 1998) (noting that the trial court "has the responsibility to assess the prosecutor's credibility under all of the pertinent circumstances, and then to weigh the asserted justification against the strength of the defendant's prima facie case under the totality of the circumstances").

vided evidence of purposeful discrimination); *Caldwell v. Maloney*, 159 F.3d 639, 651 (1st Cir. 1998) (holding that serious questions of pretext arise when the facts in the record are "objectively contrary to" the prosecutor's proffered justifications).

In addition, the trial court judge rejected the prosecutor's justification for striking Jurors 016 and 019 on the basis of gender. This too supports the argument that the prosecutor dismissed Juror 016 on the basis of her race.[13] *See Lewis*, 321 F.3d at 834 (stating that the fact that the trial court had found some of the prosecutor's arguments unconvincing "does not support the prosecutor's credibility; it undermines it"). Further, the fact that the prosecutor attempted to offer a facially discriminatory justification for dismissing the only black female jurors in the venire, and then quickly abandoned this justification when informed by the trial judge that it was improper, is another indication that the prosecutor's stated justifications were a pretext for discrimination. *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040 ("Credibility can be measured by, among other factors, the prosecutor's demeanor, by how reasonable, or how improbable, the explanations are.").

The prosecutor's objectively unreasonable statements regarding Juror 019's age, and her attempt to use gender as a race-neutral basis for excluding Jurors 016 and 019, combined with her pretextual justifications for dismissing Juror 016 on the basis of her alleged lack of community ties, her marital status, and her purported tolerance, and the fact that nothing in the record corroborated her allegations regarding Juror

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[13] In rejecting the prosecutor's initial references to gender, the trial court explained: "I recall the United States Supreme Court saying the use of peremptory challenges based on gender is improper. I don't see . . . that you are seeking to justify excusing people of one ethnicity based on their gender. I don't think that is going to cut it."

016's demeanor, provide "clear and convincing evidence" that the prosecutor did not dismiss Juror 016 on the basis of her demeanor. In light of the evidence in the record, the appellate court's determination that the prosecutor dismissed Juror 016 because of her demeanor was an unreasonable determination of the facts. Because this determination provided the basis for the appellate court's conclusion that the trial court had not clearly erred in accepting the prosecutor's justification as race-neutral, this determination also was objectively unreasonable. *See Johnson*, 3 F.3d at 1331 ("When there is reason to believe that there is a racial motivation for the challenge," we are not "bound to accept at face value a list of neutral reasons that are either unsupported in the record or refuted by it."); *Lewis*, 321 F.3d at 833-34 (holding that where justification for strike was not corroborated by the record and the prosecutor was not credible, the proffered justification could not support state court's conclusion that petitioner had failed to prove purposeful discrimination).

C.

The state court of appeal held that Collins had failed to establish purposeful discrimination on the basis of its objectively unreasonable determination that the prosecutor properly dismissed Juror 016 because of her age. The appellate court's alternative ruling—that the trial court properly credited the prosecutor's assertion that Juror 016 had rolled her eyes and turned away from the court when asked a question during voir dire, and that her dismissal based on Juror 016's demeanor did not provide any evidence of purposeful discrimination—is also unsupported by the record. Thus, clear and convincing evidence demonstrates that there was no credible basis for dismissing Juror 016 on the basis of her age or demeanor.

[9] There is, however, substantial evidence supporting Collins' contention that the prosecutor dismissed Juror 016 because of her race—evidence that the appellate court failed to address. The trial record demonstrates that the prosecutor's justifications for dismissing Juror 016 on the basis of her age were contrary to the record (likely tolerance of drug offenders), were unrelated to her ability to serve as a juror in Collins' case (lack of community ties), and were not applied equally to white jurors (single with no children). The record also shows that one of her justifications was patently discriminatory (gender), while one of her justifications for dismissing Juror 019 was contrary to the record (age). In sum, the record demonstrates that the prosecutor's proffered reasons for dismissing Juror 016 were wholly implausible, unpersuasive, and a pretext for discrimination on the basis of her race.[14]

In order to secure habeas relief, however, Collins "must demonstrate that [the] state court's finding of the absence of purposeful discrimination was incorrect by clear and convincing evidence, 28 U.S.C. § 2254(e)(1), and that the corresponding factual determination was 'objectively unreasonable' in light of the record before the court." *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1045. We conclude that Collins has met this heavy burden.

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[14] The fact that a black man and "a female juror that [was] of African-American color, black color" remained in the venire does not alter our conclusion. *See Turner*, 121 F.3d at 1254 ("[A]lthough the fact that the prosecutor accepted four African-Americans on the jury may be considered indicative of a nondiscriminatory motive, [ ] it is not dispositive."); *Palmer v. Estelle*, 985 F.2d 456, 458 (9th Cir. 1993) ("[A] trial court may consider, but may not rely solely on, the existence of Blacks on a jury when determining whether a prosecutor has violated *Batson*.").

1.

[10] The facts underlying the appellate court's conclusion, namely that the trial court properly accepted the prosecutor's justifications that Juror 016 was young and had exhibited an improper demeanor, are unsupported by the record. Collins' claim of pretext, however, is supported by the record—the record contains clear and convincing evidence that the prosecutor's reasons for striking Jurors 016 and 019 were pretextual. Thus, not only were the state appellate court's factual determinations not supported by the record, but the record also demonstrates that the appellate court's ultimate conclusion that the trial court did not err in finding that Collins failed to establish purposeful discrimination was objectively unreasonable. The fact that the appellate court failed to address all the evidence relating to the prosecutor's justification for striking Juror 016 and indeed disregarded this evidence by stating that "nothing in the present record . . . indicates the trial court did not approach its task appropriately" highlights the objective unreasonableness of its assessment of the record. Collins has thus shown by "clear and convincing evidence" that the state appellate court's determination, that the prosecutor did not purposefully discriminate on the basis of race in striking Juror 016, "was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d)(2).[15]

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[15] Contrary to the assertion in the dissent, we have not substituted our own judgment for that of the state court. "Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review. Deference does not by definition preclude relief. A federal court *can disagree* with a state court's credibility determination and, when guided by AEDPA, conclude the decision was unreasonable or that the factual premise was incorrect by clear and convincing evidence." *Miller-El*, 123 S. Ct. at 1041; *see also Hall v. Dir. of Corrs*, 343 F.3d 976, 984 n.8 (9th Cir. 2003) ("AEDPA, although emphasizing proper and due def-

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Further, although the appellate court identified the three-step inquiry for identifying purposeful discrimination under *Batson*, it unreasonably applied *Batson*'s third prong in determining that the trial court had fulfilled its *duty* to determine whether Collins had established purposeful discrimination. *See Andrade*, 123 S. Ct. at 1174 (citing *Williams v. Taylor*, 529 U.S. 362 (2000)). It is well-established that "once the prosecutor offers a race-neutral basis for his exercise of peremptory challenges, the trial court then has the *duty* to determine if the defendant has established purposeful discrimination." *Hernandez*, 500 U.S. at 363 (emphasis added) (internal quotation marks omitted); *id.* at 359 (holding that the "trial court *must* determine whether the defendant has carried his burden of proving purposeful discrimination") (emphasis added); *Batson*, 476 U.S. at 98 ("The trial court will then have the *duty* to determine if the defendant has established purposeful discrimination.") (emphasis added). As the Supreme Court has emphasized, "[i]n deciding if the defendant has carried his burden of persuasion, a court must undertake 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available,' " *Batson*, 476 U.S. at 93 (quoting *Arlington Heights*, 429 U.S. at 266), and must evaluate the "genuineness of the [prosecutor's] motive," *Purkett*, 514 U.S. at 769. Thus, a state appellate court's decision that overlooked a trial court's failure to evaluate the persuasiveness of the

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erence to the state court's findings, did not eliminate federal habeas review. Where there are real, credible doubts about the veracity of essential evidence and the person who created it, AEDPA does not require us to turn a blind eye."). Critical to our analysis are the ten different reasons offered by the prosecutor for dismissing Jurors 016 and 019. As our analysis reflects, one of the reasons was facially discriminatory, two reasons were contradicted by the record, one reason was not applied to a comparably similar juror who was not struck, and four reasons were without any support in the record.

prosecutor's justifications in conducting this inquiry would rest on an unreasonable application of well-established Supreme Court precedent. *See Lewis*, 321 F.3d at 832 ("Unlike the trial court, a court of appeal is not in an ideal position to conduct a step three evaluation. It can, however, use the trial court's findings and the evidence on the record to evaluate the support on the record for the prosecutor's reasons and credibility, and to compare the struck and empaneled jurors.")

Here, the appellate court's determination that "nothing in the present record" indicated that the trial court failed to evaluate the prosecutor's credibility must have been based either (1) upon a conclusion that there was no evidence that undermined her credibility or (2) upon a belief that the record demonstrated that the trial court had assessed any such evidence in evaluating the persuasiveness of the prosecutor's justification. The record belies either conclusion.

[11] As we have discussed, the prosecutor's attempt to justify her challenge of Juror 016 on the basis of her age, specifically on account of her marital status, her alleged lack of community ties, and her purported tolerance, was unsupported by the record. In addition, the prosecutor's attempt to justify her strike of Juror 019 on the basis of her youthful age was contradicted by the record. The trial court acknowledged that it had not observed Juror 016's alleged demeanor, and nothing in the record corroborates the prosecutor's allegations. It also rejected the prosecutor's justifications relating to gender as clearly violative of the Fourteenth Amendment. Thus, contrary to the appellate court's assessment of the record, the trial court did not fulfill its duty by determining that Collins had failed to prove purposeful discrimination when the prosecutor failed to offer any credible justification for striking Juror 016. The appellate court's contrary determination demonstrates that, although it recognized the trial court's duty under *Batson*

to determine whether Collins had shown purposeful discrimination, it unreasonably applied that principle in concluding that the trial court had done so.

IV.

[12] Because the basis for the appellate court's decision was its unreasonable determination of the facts in light of the evidence presented at the trial, and because it also unreasonably applied clearly established federal law as determined by the Supreme Court, we conclude that the state trial appellate court committed constitutional error that warrants the grant of a writ of habeas corpus under section 2254. We therefore reverse the district court's judgment and remand with instructions to grant the petition on conditions it deems appropriate.[16]

REVERSED and REMANDED.

HALL, Circuit Judge, dissenting:

The state trial court determined that the prosecutor's proffered race-neutral justifications for striking Juror 016 were credible. This conclusion is entitled to "great deference," *Hernandez v. New York*, 500 U.S. 352, 364 (1991), and may not be disturbed on appeal unless clearly erroneous. *Id.* at 369; *see also Miller-El v. Cockrell*, 123 S. Ct. 1029, 1041 (2003) (reasoning that because an appellate court has access only to the trial transcript, it is "not as well positioned as the trial court is to make credibility determinations."). Applying this deferential standard, the California Court of Appeal found that the trial court did not err. Because this case is governed by AEDPA, we must defer to the California Court of

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[16] In light of our disposition, we need not address Collins' 8th Amendment argument that his three strikes sentence was cruel and unusual. *But see Andrade*, 123 S. Ct. 1166.

Appeal's conclusion unless contrary to, or an unreasonable application of, clearly established Supreme Court precedent, or premised on an unreasonable factual finding. 28 U.S.C. § 2254(d).

The majority does not defer to the California Court of Appeal. According to the majority, deference is unwarranted because the Court of Appeal's decision rests upon the "unreasonable factual determination" that "there was 'nothing in the present record' to indicate that the trial court did not conduct a searching inquiry in giving the prosecutor the benefit of the doubt or should have questioned the prosecutor's credibility." In point of fact, the Court of Appeal held only that the trial court's *ultimate* decision to credit the prosecutor was not clearly erroneous, thereby adhering to the well-established principle that "where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous." *Hernandez*, 500 U.S. at 369.

Having manufactured a reason to disregard the California Court of Appeal's decision, the majority essentially reviews the issue of the prosecutor's credibility *de novo*, concluding that the writ should issue because, under the majority's view, "the record belies" the conclusion that the trial court assessed evidence which ostensibly undermined the prosecutor's credibility. In doing do, the majority disregards the canonical rule that evaluation of a prosecutor's credibility "lies peculiarly within a trial judge's province," and is entitled to "great deference." *Id.* at 366.[1/]

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[1] Contrary to the majority's view, the state appellate court has no duty to make its own purposeful discrimination determination. Indeed, this would be beyond the scope of the state appellate court's review. In the *Batson* context, a state appellate court's duty is limited to determining whether the *trial court's* purposeful discrimination finding was *clearly erroneous*. *E.g.*, *Hernandez*, 500 U.S. at 366-67.

Viewing the record in its entirety, I am firmly convinced that the California Court of Appeal's decision was reasonable. I respectfully dissent.

* * * * *

The majority identifies four considerations potentially relevant to the prosecutor's credibility. In order to reject the California Court of Appeal's decision, we would have to conclude that the Court of Appeal *unreasonably* determined that, given these four considerations, the trial court did not *clearly err* by crediting the prosecutor's race-neutral explanation. As the following discussion illustrates, the majority falls far short of making this requisite demonstration.

The majority argues that the trial court should have questioned the prosecutor's credibility because she referred to *another* prospective juror, Juror 019, as "young" even though Juror 019 was a grandmother of five. As the majority suggests, the prosecutor may have either been entirely incapable of judging a person's age or may have intentionally misrepresented Juror 019's age to the court. A far more plausible explanation, on the other hand, is that the reference to Juror 019 as "young" was purely accidental. The statement at issue occurred during a discussion about Juror 016, Juror 019, and Juror 006, a young, single white male against whom the prosecutor also exercised a peremptory strike. Because Jurors 016 and 019 were the subject of the *Batson* challenge, both jurors were repeatedly referred to in tandem. Similarly, Jurors 016 and 006 were referred to together several times by the prosecutor, who argued that the two young, single jurors were similarly situated. In this context, it is not surprising that the prosecutor would, on one occasion, flip the designations "006" and "019." Indeed, defense counsel also seemed confused about the numerical designations, once mistakenly

referring to Juror 016 as "Ms. 019."[2] Both the trial judge and defense counsel clearly indicated that they understood the prosecutor's justification for striking Juror 019 to be her daughter's drug problem, and the prosecutor's justification for striking Juror 016 to be that, like Juror 006, she was young, single, and potentially tolerant.[3] Under these circumstances, the majority's focus on the prosecutor's misstatement,[4] an issue that was not briefed by the parties, is nothing short of absurd.

The majority also argues that the trial judge should have questioned the prosecutor's credibility because the prosecutor cited a desire to have "more male-female balance" in the jury as a race-neutral basis for excluding Juror 016. The majority places undue emphasis on the prosecutor's arguably improper reference to gender. The prosecutor cited a variety of other race-neutral justifications, including Juror 016's demeanor, youth, marital status, and possible tolerance. There is no indication in Supreme Court precedent, or in cases from our circuit for that matter, that a trial judge's decision to reject *one* of the prosecutor's race-neutral justifications compels the trial judge to reject *all* of the other race-neutral justifications

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[2] After noting that one of the prosecutor's justifications for striking *Juror 016* was a lack of information, defense counsel argued, "if [the prosecutor] wanted more information, she could have asked the court to ask more questions of *Ms. 019*."

[3] Summarizing the prosecution's argument, defense counsel stated: "[The prosecutor] has compared Ms. 016 to Mr. 006, which she excused by saying they were both young. . . . And Ms. 019, certainly, indeed, said that she had . . . one daughter which she said had a cocaine problem and that she had been involved with treatment for the daughter."

[4] Indeed, the prosecutor's "incorrect factual statement" is the majority's lead argument in support of its conclusion that the trial court clearly erred in considering the prosecutor to be credible.

offered by that prosecutor.[5] In the instant case, the trial judge rejected the prosecutor's gender-balance justification, but nonetheless chose to credit the prosecutor's other race-neutral justifications for the challenge. The majority highlights nothing in the record to indicate that the California Court of Appeal should have deemed this decision *clearly erroneous*.

The third credibility issue raised by the majority also relates to Juror 019 rather than Juror 016. Making an argument not presented by Collins either before this court or before the California Court of Appeal, the majority contends that the prosecution's explanation that Juror 019 had a daugh-

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[5] The majority quotes this court's decision in *Johnson v. Vasquez*, 3 F.3d 1327 (9th Cir. 1993), for the proposition that " '[w]hen there is reason to believe that there is a racial motivation for the challenge,' we are not 'bound to accept at face value a list of neutral reasons that are either unsupported in the record or refuted by it.' " *Id.* at 1331. This reference is misleading, however. First of all, the *Johnson* court was confronted with a case in which the prosecutor's own statements "strongly suggest[ed] that [he] responded to defense counsel's alleged exclusions of other minority venire members by excluding a member of defendant's race." *Id.* at 1330. Hence, this court's admonition that "when there is reason to believe that there is a racial motivation for the challenge . . . we are not bound" was a direct reference to the prosecutor's tacit admission that he was excluding members of the venire based on their ethnicity, an integral element of the *Johnson* decision which is not present in the instant case.

Second, the majority omits crucial language from the *Johnson* decision which bears on its relevance to the case at bar. Specifically, we noted that "*neither the trial courts nor we* are bound to accept" the prosecutor's ostensibly neutral rationales at face value. *Id.* at 1331 (emphasis added). Viewed in context, the language from our *Johnson* decision clarifies the majority's fundamental mistake in this case. Once the trial court decides to "accept at face value" a "list of neutral reasons" proffered by the prosecutor, we are bound by precedent to grant that decision "great deference." *Hernandez*, 500 U.S. at 366.

Finally, even if the language from *Johnson* were pertinent to the instant case, it nonetheless fails to dispute the point that, even if a trial or appellate court chose not to accept *one* (or more) of the prosecutor's articulated justifications, they would not thereby be compelled to reject *all* of the proffered rationales.

ter recently treated for cocaine addiction was pretextual because a white juror passed by the prosecution, Juror 030, also had a child with a cocaine problem. There are several fundamental problems with the majority's analysis of this issue. The issue was not briefed by the parties or discussed at oral argument, and the record itself certainly does not contain clear and convincing evidence that Juror 019 and Juror 030 were, as the majority terms them, "indistinguishably similar."[6] Moreover, even if one accepts the majority's shaky premise that Jurors 019 and 030 were "indistinguishably similar," there is no Supreme Court precedent indicating that a race-neutral justification is necessarily pretextual merely because it applies to another member of the venire. Similarly, there is a complete dearth of Supreme Court precedent indicating that a trial judge may not credit a prosecutor's race-neutral justification if there is reason to believe that the race-neutral justification given for *another* juror was pretextual. For these reasons, the prosecutor's conduct vis-a-vis Juror 019 lends very little, if any, support to the majority's conclusion that the trial judge should have questioned the prosecutor's explanation for striking Juror 016.

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[6] For example, Juror 019's daughter's cocaine problem were more recent (two years) than was Juror 030's son's problem (six years). There may also have been significant differences in the demeanor of each prospective juror that are not evident from the trial transcript.

By way of contrast, compare the majority's conclusion that Jurors 019 and 030 are indistinguishable to its own discussion of the dissimilarity of Jurors 006 and 016, which is relegated to a footnote. In support of its claim that the prosecutor's alleged rationales for dismissing Juror 016 (her marital status and lack of community ties) were pretextual, even though Juror 006 was also dismissed on the same grounds, the majority summarily concludes that "[t]he record reveals . . . that Jurors 006 and 016 had very different backgrounds and thus did not possess 'comparable characteristics,' " even though Jurors 006 and 016 "were both single, no ties."

Finally, the majority contends that the prosecutor's explanation that Juror 016 was a youthful single person, and therefore potentially too tolerant, was not credible. Noting that Juror 016 "believed possession of crack cocaine should be illegal," the majority concludes that the prosecutor's concern that Juror 016 might be too tolerant for this three strikes case was "patently frivolous." The majority's conclusion is simply untenable — the theory that young persons, even those who believe crack cocaine should be illegal and don't expressly indicate any heightened tolerance for drug offenders, may be less willing to impose harsh sentences for drug possession than their older counterparts in the venire can hardly be considered unreasonable, much less "implausible or fantastic."

Indeed, the majority's own analysis demonstrates precisely why the Court of Appeal properly deferred to the trial court's judgment. The majority strains to find that the credibility issues discussed above constitute "clear and convincing" evidence which not only undermines the prosecutor's credibility, but makes clear that the prosecutor's articulated rationales for her peremptories were "wholly implausible." Viewing the majority's credibility argument generously, however, their conclusion is merely that the trial court had several potential reasons to question the prosecutor's credibility. Presumably, the trial court also had a variety of potential reasons to believe that the prosecutor *was* credible, including the prosecutor's ostensibly truthful comparison between Juror 016 and Juror 006. Significantly, the trial judge also had the ability to observe the prosecutor's demeanor to determine whether she appeared to be telling the truth, evidence which would not be evident in the record. Both the majority opinion and the record are devoid of any basis for concluding that the prosecutor's statements and demeanor left the trial judge with *no permissible alternative* but to reject the prosecutor's race-neutral justifications. *See Hernandez*, 500 U.S. at 369 ("Where there are two permissible views of the evidence, the

fact-finder's choice between them cannot be clearly erroneous."). *See also Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (stating that Section 2254 "demands that state court decisions be given the benefit of the doubt").

For the foregoing reasons, I would affirm.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
PLAINTIFF-RESPONDENT,	)	SUPERIOR COURT
	)	NO. YA028034
VS.	)	
	)	
STEVEN MARTELL COLLINS,	)	
DEFENDANT-APPELLANT.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HON. ANDREW C. KAUFFMAN, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: DANIEL E. LUNGREN
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, STE. 5001
LOS ANGELES, CALIFORNIA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 1 OF 1 HERBERT CANNON, CSR #1923
OFFICIAL REPORTER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT
SW "L" HON. ANDREW C. KAUFFMAN, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
PLAINTIFF,	)	NO. YA028034
VS.	)	
STEVEN MARTELL COLLINS,	)	
DEFENDANT.	)	

REPORTER'S TRANSCRIPT ON APPEAL

MAY 28; AUGUST 26, 27, 28, 29; OCTOBER 2, 10, 1996

APPEARANCES:

FOR THE PEOPLE: GIL GARCETTI, DISTRICT ATTORNEY
BY: GINA SATRIANO, DEPUTY
825 SOUTH MAPLE AVENUE
TORRANCE, CALIFORNIA 90503

FOR THE DEFENDANT: MICHAEL P. JUDGE, PUBLID DEFENDER
BY: MARY NACHMAN, DEPUTY
825 SOUTH MAPLE AVENUE
TORRANCE, CALIFORNIA 90503

HERBERT CANNON, CSR #1923
OFFICIAL REPORTER

[3]

TORRANCE, CALIFORNIA; MONDAY, AUGUST 26, 1996

2:10 P.M.

DEPARTMENT
SW "L" HON. ANDREW C. KAUFFMAN, JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

(HERBERT CANNON, OFFICIAL REPORTER.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

. . . .

[6] GIVING ME ANY DETAILS, MS. NACHMAN, IS WHAT?

MS. NACHMAN: MR. COLLINS IS MAINTAINING THAT HE IS NOT GUILTY OF THE CHARGE.

THE COURT: THAT DOESN'T HELP ME A LOT, MS. NACHMAN.

MS. NACHMAN: HE SAYS HE DID NOT HAVE THE NARCOTICS ON HIM.

THE COURT: IS THIS A SO-CALLED THROW OR DROP CASE?

MS. NACHMAN: IT WAS A BOOKING SEARCH.

THE COURT: SO THE ALLEGATION IS THAT IT WAS SOMEHOW PLANTED ON MR. COLLINS OR THAT IT WAS ENTIRELY FABRICATED?

MS. NACHMAN: YOU CAN SAY THAT. HE IS CLAIMING IT WAS PLANTED.

MS. SATRIANO: DOES THE COURT ANTICIPATE GETTING INTO TESTIMONY TODAY, OR CAN I EXCUSE THE DEPUTY?

THE COURT: IT IS A THIRD-STRIKE CASE. I DOUBT IF WE'LL GET INTO ANY EVIDENCE TODAY.

MS. NACHMAN: I WILL NEED A MOMENT TO GET HIM SOME CLOTHING.

THE COURT: WE'LL BE IN RECESS UNTIL THE JURY ARRIVES.

(RECESS.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL:)

THE COURT: WOULD YOU ALL RISE, PLEASE?

[7] (THE PROSPECTIVE JURY PANEL WAS SWORN BY THE CLERK TO TRY THE CAUSE.)

THE CLERK: YOU MAY BE SEATED.

JUROR NO. 1, 001.

NO. 2, 002.

NO. 3, 003.

NO. 4, 004.

NO. 5, 005

NO. 6, 006.

NO. 7, 007.

NO. 8, 008.

NO. 9, 009.

NO. 10, 0010.

NO. 11, 0011.

NO. 12, 0012.

THE COURT: FOR THOSE OF YOU WHO ARE STILL IN THE AUDIENCE, I'M NOW GOING TO ASK A SERIES OF QUESTIONS OF THE JURORS WHO ARE NOW SITTING IN THE JURY BOX. I WILL ASK THAT YOU, PLEASE, LISTEN CAREFULLY TO ALL THE QUESTIONS THAT I ASK AS WELL AS TO ANY ANSWERS THAT THEY MAY GIVE SO THAT IF LATER ON YOUR NAME IS CALLED AND YOU ARE ASKED TO TAKE ONE OF THEIR PLACES, I WON'T HAVE TO START ALL OVER AGAIN AND ASK YOU ALL THE SAME QUESTIONS.

LADIES AND GENTLEMEN, THIS IS A FELONY CRIMINAL CASE THAT WE ARE ABOUT TO START ENTITLED THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VERSUS STEVEN MARTELL COLLINS AS DEFEDNANT.

[8] MR. COLLINS IS SITTING AT THE COUNSEL TABLE FARTHEST FROM YOU. AND HE IS

REPRESENTED IN THIS CASE BY MS. MARY NACHMAN.

THE PEOPLE IN THIS CASE ARE REPRESENTED BY DEPUTY DISTRICT ATTORNEY GINA SATRIANO.

IT IS CHARGED IN THE INFORMATION AS FOLLOWS:

THAT ON OR ABOUT THE 19TH OF MARCH OF THIS YEAR IN THIS COUNTY, THE CRIME OF POSSESSION OF A CONTROLLED SUBSTANCE IN VIOLATION OF HEALTH AND SAFETY CODE SECTION 11350, SUBDIVISION A, A FELONY, WAS COMMITTED BY STEVEN MARTELL COLLINS WHO DID WILLFULLY, AND UNLAWFULLY HAVE IN HIS POSSESSION A CONTROLLED SUBSTANCE, TO WIT, ROCK COCAINE.

IT IS FURTHER ALLEGED PURSUANT TO PENAL CODE SECTIONS 1170.12, SUBDIVISION A THROUGH SUBDIVISION D AND SECTION 667 SUBDIVISION B THROUGH (I), THAT THE DEFENDANT STEVEN MARTELL COLLINS HAS SUFFERED THE FOLLOWING

PRIOR CONVICTIONS OF SERIOUS OR VIOLENT FELONIES, ROBBERY, IN VIOLATION OF SECTION 211 IN CASE NO. A199738 ON JANUARY 25TH OF 1982 IN THE SUPERIOR COURT OF THIS COUNTY; RAPE IN VIOLATION OF SECTION 261, SUBDIVISION (2) OF THE PENAL CODE ON THAT SAME DATE IN LOS ANGELES COUNTY AND FURTHER ALLEGED PURSUANT TO PENAL CODE SECTION 667.5 SUBDIVISION (B), THAT THE DEFENDANT STEVEN MARTELL COLLINS SUFFERED THE TWO PRIOR CONVICTIONS THAT I HAVE MENTIONED, ROBBERY AND RAPE, AND IN ADDITION ON THE 6TH OF SEPTEMBER OF 1983, IN THE SAN BERNARDINO SUPERIOR COURT WAS CONVICTED OF THE CRIME OF BEING AN EX-FELON IN POSSESSION OF A FIREARM IN VIOLATION OF PENAL SECTION 12021 OF THE PENAL CODE AND THAT A TERM WAS SERVED [9] AS DESCRIBED IN PENAL CODE SECTION 667.5 FOR SAID OFFENSES AND

THAT THE DEFENDANT DID NOT REMAIN FREE OF PRISON CUSTODY FOR AND DID COMMIT AN OFFENSE RESULTING IN A FELONY CONVICTION DURING THAT PERIOD OF FIVE YEARS SUBSEQUENT TO THE CONCLUSION OF SAID TERM.

TO THIS CHARGE, MR. COLLINS HAS ENTERED A PLEA OF NOT GUILTY. AND TO THE ALLEGATION THAT HE SUFFERED THE THREE PRIOR CONVICTIONS, HE HAS ENTERED A DENIAL. AND THAT IS THE REASON WE ARE ALL ASSEMBLED HERE AND ABOUT TO START THE TRIAL IN THIS CASE.

ASIDE FROM WHAT YOU HAVE JUST HEARD ME READ TO YOU, DO ANY OF YOU KNOW ANYTHING ABOUT THIS CASE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU KNOW MR. COLLINS?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU KNOW EITHER OF THE ATTORNEYS?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: IS THERE ANYTHING ABOUT THE NATURE OF [10] THE CHARGE, POSSESSION OF ROCK COCAINE IN AND OF ITSELF THAT MIGHT MAKE IT DIFFICULT FOR ANY OF YOU TO SERVE AS JURORS ON THIS KIND OF CASE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: NOW, BASED ON WHAT I HAVE BEEN TOLD ABOUT THE CASE BY THE LAWYERS, I WOULD EXPECT THIS CASE WOULD BE SUBMITTED TO THE JURY PROBABLY NO LATER THAN WEDNESDAY OF THIS WEEK. I, OBVIOUSLY, DON'T KNOW HOW LONG THE JURY WILL DELIBERATE ON THIS CASE, BUT I THINK IT IS SAFE TO SAY THIS CASE SHOULD BE ALL OVER WITH BY FRIDAY.

WOULD THAT PRESENT A HARDSHIP FOR ANY OF YOU?

PROSPECTIVE JUROR 001: YES. I WATCH MY KIDS AND I HAVE A BUSINESS CONFERENCE ON WEDNESDAY.

THE COURT: SO YOU ARE UNAVAILABLE ALL DAY WEDNESDAY?

PROSPECTIVE JUROR 001: YES.

THE COURT: WHO ELSE HAD THEIR HAND UP?

PROSPECTIVE JUROR 009: MY COMPANY ONLY PAYS FOR FIVE DAYS OF JURY DUTY. THEY EXPECT ME TO BE BACK TO WORK. I TAKE CARE OF THEIR WHOLE COMPUTER OPERATION THERE.

THE COURT: THIS IS YOUR FOURTH DAY?

PROSPECTIVE JUROR 009: YES.

THE COURT: COUNSEL, WILL YOU STIPULATE THAT 001 AND 009 MAY BE EXCUSED?

MS. SATRIANO: YES.

MS. NACHMAN: YES.

[11] THE COURT: YOU MAY BE EXCUSED.

011, DID YOU HAVE YOUR HAND UP?

PROSPECTIVE JUROR 011: I HAVE A DOCTOR'S APPOINTMENT.

THE COURT: HOW LONG DO YOU THINK THAT IS GOING TO TAKE?

PROSPECTIVE JUROR 011: MAYBE AN HOUR OR SO.

PROSPECTIVE JUROR 003: I HAVE AN APPOINTMENT ON FRIDAY.

THE COURT: WHAT TIME IS YOUR APPOINTMENT?

PROSPECTIVE JUROR 003: 10:00.

THE COURT: IS IT ALSO GOING TO TAKE ABOUT AN HOUR?

PROSPECTIVE JUROR 003: YES.

THE COURT: REMIND ME. WE CAN WORK AROUND THAT.

ANYBODY ELSE?

THE CLERK WILL, PLEASE, CALL A COUPLE OF MORE NAMES.

THE CLERK: 013.

014.

THE COURT: GOOD AFTERNOON, 013. GOOD AFTERNOON, 014.

WERE YOU ABLE TO HEAR ME READ THE CHARGE IN THIS CASE, 013?

PROSPECTIVE JUROR 013: YES.

THE COURT: HOW ABOUT YOU, 014?

PROSPECTIVE JUROR 014: YES.

THE COURT: IS THERE ANYTHING ABOUT THE NATURE OF THE CHARGES IN THIS CASE THAT MIGHT MAKE IT DIFFICULT FOR [12] YOU TO SERVE ON THIS CASE, 013?

PROSPECTIVE JUROR 013: I DON'T THINK SO.

THE COURT: IS THERE ANY QUESTION IN YOUR MIND?

PROSPECTIVE JUROR 013: YES.

THE COURT: WOULD YOU TELL ME, PLEASE, WHY YOU HAVE THAT QUESTION IN YOUR MIND?

PROSPECTIVE JUROR 013: I JUST HAVE VERY BAD FEELINGS ABOUT THIS COURTHOUSE.

THE COURT: ABOUT THIS COURTHOUSE?

DOES IT HAVE ANYTHING TO DO WITH THE LUXURIOUS JURY ASSEMBLY ROOM?

PROSPECTIVE JUROR 013: NO, NO. I AM DISCONTENT, I THINK, WITH SOME OF THE JUDGES; NOT YOU, BUT SOME OF THE JUDGES IN THIS COURTHOUSE. I HAVE BAD FEELINGS ABOUT THIS. IT HAS NOTHING TO DO WITH THIS CASE.

THE COURT: WELL, DO YOU THINK THAT YOU COULD SET THOSE GENERALIZED FEELINGS THAT YOU MIGHT HAVE ASIDE LONG ENOUGH TO OBJECTIVELY EVALUATE THIS CASE?

PROSPECTIVE JUROR 013: I THINK SO. I THINK SO.

THE COURT: WELL, I HAVE TO TELL YOU, FRANKLY, MS. 013, WHEN YOU ANSWER QUESTIONS BY SAYING I THINK SO OR I HOPE SO --

PROSPECTIVE JUROR 013: I CAN.

THE COURT: IS THAT A TRUTHFUL ANSWER?

PROSPECTIVE JUROR 013: YES. YES, I CAN.

THE COURT: WHAT ABOUT YOU, 014?

PROSPECTIVE JUROR 014: EVERYTHING IS FINE.

THE COURT: DO YOU KNOW ANY OF THE PEOPLE THAT HAVE [13] BEEN INTRODUCED AT COUNSEL TABLE, MS. 013?

PROSPECTIVE JUROR 013: NO.

THE COURT: DO YOU, 014?

PROSPECTIVE JUROR 014: NO.

THE COURT: DO YOU THINK YOU WOULD HAVE A PROBLEM STAYING WITH US TO THE END OF THE WEEK IF NECESSARY, 013?

PROSPECTIVE JUROR 013: NO.

THE COURT: 014?

PROSPECTIVE JUROR 014: NO.

THE COURT: THAT BRINGS YOU TO WHERE EVERYONE ELSE IS.

BOTH SIDES OF THIS CASE ARE ENTITLED TO HAVE THE CASE HEARD AND DECIDED BY A FAIR,

IMPARTIAL, UNBIASED AND UNPREJUDICED JURY, ONE THAT WILL CONSCIENTIOUSLY WEIGH ALL THE EVIDENCE THAT IS PRESENTED AND APPLY THE LAW AND ARRIVE AT A JUST VERDICT REGARDLESS OF WHAT THE CONSEQUENCES OF THAT VERDICT MIGHT BE TO EITHER SIDE.

IF AT ANY POINT DURING THE COURSE OF THIS JURY INSTRUCTION PROCESS, IT OCCURS TO YOU FOR ANY REASON THAT YOU WOULD HAVE DIFFICULTY SERVING IN THAT CAPACITY, IT WOULD BE YOUR OBLIGATION TO MAKE THAT FACT KNOWN TO US.

MAY I, PLEASE, HAVE YOUR ASSURANCE THAT YOU WILL DO SO?

AS YOU KNOW FROM READING YOUR JUROR'S HANDBOOK OR FROM ANY PREVIOUS EXPERIENCE YOU MIGHT HAVE SITTING AS A JUROR ON CRIMINAL CASES, AS MR. COLLINS SITS AT COUNSEL TABLE HE

IS PRESUMED BY LAW TO BE INNOCENT OF THIS CHARGE. THAT DOES PLACE THE RESPONSIBILITY OR BURDEN OF PROVING HIM GUILTY [14] ON THE DISTRICT ATTORNEY. UNLESS AND UNTIL THE DISTRICT ATTORNEY CAN PRESENT SUCH EVIDENCE TO YOU TO CONVINCE YOU BEYOND A REASONABLE DOUBT THAT MR. COLLINS IS GUILTY OF THIS CHARGE, THE PRESUMPTION OF INNOCENCE PREVAILS AND YOU WOULD BE REQUIRED TO RETURN A VERDICT OF NOT GUILTY.

SO IF I WERE TO SURPRISE YOU ALL RIGHT NOW AND ASK YOU TO STEP INTO THE JURY ROOM, DELIBERATE ON THIS CASE AND COME BACK OUT INTO THE COURTROOM WITH A VERDICT, YOU WOULD HAVE NO ALTERNATIVE BUT TO COME BACK WITH A VERDICT OF NOT GUILTY BECAUSE YOU HAVE HEARD NOTHING FROM THE DISTRICT

ATTORNEY TO OVERCOME THE PRESUMPTION OF INNOCENCE.

DO YOU ALL UNDERSTAND THAT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: THE FACT THAT MR. COLLINS MIGHT HAVE BEEN ARRESTED BY THE POLICE, THE FACT THAT SOMEBODY AT THE DISTRICT ATTORNEY'S OFFICE WAS ABLE TO GET A WORD PROCESSOR TO GENERATE A PIECE OF PAPER THAT HAS MR. COLLINS' NAME ON IT, THE FACT THAT HE IS HERE TODAY IN COURT, NONE OF THOSE FACTS ARE EVIDENCE OF HIS GUILT AND YOU ARE NOT TO INFER OR ASSUME FROM ANY OR ALL OF THOSE THAT HE IS MORE LIKELY TO BE GUILTY THAN INNOCENT.

WHEN I USE THE TERM EVIDENCE, I AM TALKING ABOUT THE TESTIMONY OF WITNESSES FROM THIS WITNESS STAND UNDER OATH, WRITINGS, MATERIAL OBJECTS OR ANYTHING THAT IS PRESENTED TO YOUR SENSES AND OFFERED TO PROVE THE EXISTENCE OR NONEXISTENCE [15] OF A FACT.

NOW, DO YOU ALL THINK THAT YOU UNDERSTAND THE CONCEPT -- DO YOU THINK YOU UNDERSTAND WHAT I AM TALKING ABOUT IF I USE THE TERM "EVIDENCE"?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: NOW, AS I INDICATED TO YOU, THE ENTIRE RESPONSIBILITY OF PRESENTING THAT EVIDENCE TO YOU IS ON THE DISTRICT ATTORNEY. NOW, SINCE THAT IS SO AND SINCE MR. COLLINS

DOES START OUT BEING PRESUMED INNOCENT, HE HAS NO OBLIGATION TO PROVE ANYTHING TO YOU AT ALL. HE NEED NOT CALL A SINGLE WITNESS TO THE WITNESS STAND; HE NEED NOT OFFER A SINGLE ITEM OF PHYSICAL EVIDENCE FOR YOU TO LOOK AT; HE NEED NOT TAKE THE WITNESS STAND HIMSELF TO TESTIFY IN HIS OWN BEHALF.

I DON'T KNOW WHETHER MR. COLLINS WILL CHOOSE TO TESTIFY IN THIS CASE OR NOT. IF HE DECIDES NOT TO TESTIFY, YOU MUST NOT IN ANY WAY HOLD THAT AGAINST HIM BECAUSE THAT IS HIS ABSOLUTE CONSTITUTIONAL RIGHT.

DO YOU UNDERSTAND THAT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: YOU HEARD ME USE THE TERM BEYOND A REASONABLE DOUBT A FEW MINUTES AGO AS BEING THE STANDARD BY [16] WHICH YOU WILL HAVE TO EVALUATE THE EVIDENCE THAT YOU WILL HEAR IN THIS TRIAL. AND THE TERM REASONABLE DOUBT IS DEFINED AS FOLLOWS: IT IS NOT A MERE POSSIBLE DOUBT BECAUSE EVERYTHING RELATING TO HUMAN AFFAIRS IS OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT. IT IS THAT STATE OF THE CASE WHICH, AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF ALL OF THE EVIDENCE LEAVES YOUR MINDS IN THAT CONDITION THAT YOU CANNOT SAY YOU HAVE AN ABIDING CONVICTION OF THE TRUTH OF THE CHARGE.

NOW, DO YOU ALL THINK YOU UNDERSTAND THE CONCEPT OF PROOF BEYOND A REASONABLE DOUBT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: ARE YOU WILLING TO USE THAT STANDARD AND ONLY THAT STANDARD TO EVALUATE THE EVIDENCE THAT YOU WILL HEAR DURING THE COURSE OF THIS TRIAL?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: NOW, IN DECIDING THIS CASE, YOU ARE GOING TO BE LIMITED TO THE EVIDENCE THAT IS PRESENTED DURING THE COURSE OF TRIAL IN THIS COURTROOM. NOW, WHAT THAT MEANS IS THAT YOU ARE NOT TO GO TO ANY LOCATION THAT MIGHT BE MENTIONED DURING THE COURSE OF THE TRIAL IF YOU CAN REASONABLY AVOID DOING SO.

YOU ARE NOT TO CONDUCT YOUR OWN INVESTIGATION; [17] YOU ARE NOT TO INTERVIEW YOUR OWN WITNESSES, CONSULT WITH RELATIVES, FRIENDS AND NEIGHBORS THAT YOU THINK MIGHT HAVE SOME GENERAL INFORMATION TO GIVE YOU ABOUT THE SUBJECT MATTER OF THE CASE.

AT NOON, YOU ARE NOT TO WALK ACROSS THE PARKING LOT TO THE TORRANCE LIBRARY AND LOOK THINGS UP IN DICTIONARIES, ENCYCLOPEDIAS OR OTHER REFERENCE WORKS.

THESE MIGHT SOUND LIKE OBVIOUS THINGS TO YOU, BUT JURORS HAVE DONE SOME OF THESE THINGS IN OTHER CASES.

DO YOU ALL UNDERSTAND YOU ARE NOT TO DO ANYTHING OF THAT SORT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED TO YOU, I WILL BE READING TO YOU A SET OF INSTRUCTIONS ON THE APPLICABLE LAW. YOU MUST ACCEPT AND APPLY THE LAW AS I STATE IT TO YOU WHETHER OR NOT YOU AGREE WITH IT.

BOTH SIDES OF THIS CASE HAVE PREPARED FOR THE CASE AND WILL PRESENT IT TO YOU BASED ON THE ASSUMPTION THAT YOU WILL ACCEPT AND APPLY THE LAW AS IT CURRENTLY EXISTS HERE IN THE STATE OF CALIFORNIA.

NOW, IT WOULD BE VERY UNFAIR FOR YOU, MORE THAN THAT, IT WOULD BE ABSOLUTELY IMPROPER FOR YOU TO DECIDE THIS CASE BASED NOT ON WHAT THE LAW IS, BUT ON WHAT YOU PERSONALLY THINK IT OUGHT TO BE.

I MUST HAVE YOUR ASSURANCE RIGHT NOW BEFORE WE [18] GO ANY FURTHER THAT YOU WILL

WITHOUT ANY RESERVATION WHATSOEVER FOLLOW THE LAW AS I STATE IT TO YOU.

MAY I HAVE THAT ASSURANCE, PLEASE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: NOW, I AM SURE THIS IS OBVIOUS TO YOU, LADIES AND GENTLEMEN, THAT THIS TRIAL IS NOT A POPULARITY CONTEST. YOU ARE NOT TO DECIDE THIS CASE BASED ON WHETHER OR NOT YOU THINK MR. COLLINS IS A NICE PERSON. YOU ARE NOT TO DECIDE THIS CASE BASED ON YOUR BELIEF AS TO ANYONE INVOLVED IN THIS CASE BEING A NICE PERSON; YOU ARE NOT TO DECIDE THE CASE BASED ON WHICH ATTORNEY YOU THINK DOES THE BEST JOB; YOU ARE NOT TO BE CONCERNED ABOUT HURTING ANYBODY'S FEELINGS; YOU ARE NOT TO

DECIDE THIS CASE BASED ON RACE, RELIGION, GENDER, NATIONAL ORIGIN OR SEXUAL ORIENTATION OF ANY OF THE ATTORNEYS, PARTIES, OR WITNESSES.

YOU ARE NOT HERE TO SEND A MESSAGE TO THE STREETS AND YOU ARE NOT HERE TO SEND A MESSAGE TO THE AUTHORITIES. YOU ARE NOT TO ALLOW SYMPATHY, PASSION, PREJUDICE, PUBLIC OPINION OR PUBLIC FEELING TO ENTER INTO YOUR DECISION-MAKING PROCESS IN ANY WAY. AND IF AFTER DUE DELIBERATION IN THE JURY ROOM, YOUR VERDICT IN THIS CASE IS TO BE GUILTY, YOU MUST NOT ALLOW THE SUBJECT OF PENALTY OR PUNISHMENT TO INFLUENCE THAT DECISION. THAT IS ALSO A MATTER WHICH MUST NOT IN ANY WAY AFFECT YOUR VERDICT.

DO YOU ALL UNDERSTAND THOSE THINGS AS WELL?

[19] (THE PROSPECTIVE JURY PANEL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: NOW, WHAT WE ARE TRYING TO DO AT THIS STAGE OF THE PROCEEDINGS IS TO FIND 12 PEOPLE THAT CAN LISTEN CAREFULLY TO THE EVIDENCE, APPLY THE LAW OBJECTIVELY AND REACH A DECISION IN THE CASE, IF IT IS POSSIBLE TO DO SO; THIS BEING A CRIMINAL CASE, ANY DECISION THAT THE JURY ARRIVES AT WILL HAVE TO BE A UNANIMOUS ONE THAT IS JOINED IN BY ALL 12 JURORS. ON THE OTHER HAND, EACH OF THE 12 INDIVIDUAL JURORS IS GOING TO BE EXPECTED TO ARRIVE AT HIS OR HER OWN INDIVIDUAL EVALUATION OF THE EVIDENCE AND DECISION IN THE CASE.

NOW, DO ANY OF YOU, KNOWING YOURSELVES AS YOU DO AND KNOWING THAT THIS IS A GROUP

DECISION-MAKING PROCESS, THINK THAT YOU WILL BE UNABLE TO ARRIVE AT YOUR OWN INDEPENDENT DECISION?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: AFTER HAVING ARRIVED AT YOUR OWN INDEPENDENT DECISION YOU DISCOVER AT SOME POINT DURING THE JURY DELIBERATIONS THAT YOU ARE IN THE DISTINCT MINORITY WITH NINE, TEN, OR EVEN ELEVEN OF THE OTHER JURORS HAVING DECIDED THE CASE THE OTHER WAY, DO ANY OF YOU THINK YOU WOULD CHANGE YOUR MINDS JUST TO GO ALONG WITH THE WILL OF THE MAJORITY?

??

[20] (THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: BUT IF THE MAJORITY WERE ABLE TO CONVINCE YOU THAT YOUR INITIAL DECISION WAS WRONG, WOULD ANY OF YOU REFUSE TO CHANGE YOUR MINDS AS A MATTER OF PRIDE OR PRINCIPLE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: THERE ARE CERTAIN PEOPLE THAT ARE OF THE VIEW THAT ANYBODY THAT IS ARRESTED BY THE POLICE OR ACCUSED OF A CRIME IS AUTOMATICALLY GUILTY OF THAT CRIME AND THERE IS NO PURPOSE TO BE SERVED IN EVEN BOTHERING WITH A TRIAL.

DO ANY OF YOU FEEL THAT WAY?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: IF YOU ARE SATISFIED AFTER HEARING THE EVIDENCE IN THIS CASE THAT THE APPROPRIATE VERDICT IS NOT GUILTY, WILL ANY OF YOU HESITATE TO RETURN THAT VERDICT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: IF YOU ARE SATISFIED AFTER HEARING THE [21] EVIDENCE THAT THE APPROPRIATE VERDICT IS GUILTY, WILL ANY OF HESITATE TO RETURN THAT VERDICT?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU HAVE ANY RELIGIOUS, PHILOSOPHICAL OR OTHER PERSONAL BELIEFS OF ANY KIND THAT WOULD MAKE IT EXTREMELY DIFFICULT FOR YOU OR EVEN IMPOSSIBLE FOR YOU TO ESSENTIALLY JUDGE THE PROPRIETY OF SOMEBODY ELSE'S CONDUCT?

MS. 011, DO YOU THINK YOU WOULD HAVE A PROBLEM DOING THAT?

PROSPECTIVE JUROR 011: YES.

THE COURT: THANK YOU, 011, FOR LETTING ME KNOW THAT. I WILL EXCUSE YOU.

THE CLERK: 015.

THE COURT: MS. 015, GOOD AFTERNOON.

DO YOU KNOW WHAT THE CHARGE IS IN THIS CASE?

PROSPECTIVE JUROR 015: YES.

THE COURT: IS THERE ANYTHING ABOUT THE NATURE OF THE CHARGE THAT MIGHT MAKE IT DIFFICULT FOR YOU TO SERVE ON THIS CASE?

PROSPECTIVE JUROR 015: NO.

THE COURT: WOULD YOU BE ABLE TO SERVE THROUGH THE END OF THE WEEK?

PROSPECTIVE JUROR 015: YES.

THE COURT: DO YOU KNOW ANY OF THE PEOPLE WHO HAVE [22] HAVE BEEN INTRODUCED AT COUNSEL TABLE?

PROSPECTIVE JUROR 015: NO.

THE COURT: WERE YOU ABLE TO FOLLOW THE DISCUSSIONS I HAD WITH THE OTHER JURORS WITH REGARD TO THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 015: YES.

THE COURT: WOULD YOU BE ABLE TO DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE

INSTRUCTIONS OF LAW WITHOUT REGRD TO ANY OF YOUR PERSONAL FEELINGS?

PROSPECTIVE JUROR 015: YES.

THE COURT: DO YOU THINK YOU WOULD BE ABLE TO DECIDE THIS CASE FOR YOURSELF?

PROSPECTIVE JUROR 015: YES.

THE COURT: ALL RIGHT. THAT PRETTY MUCH BRINGS YOU UP TO WHERE EVERYONE ELSE IS.

WHAT I WOULD LIKE TO HAVE ALL OF YOU DO, BEGINNING WITH 013, IS TO GIVE US THE INFORMATION REQUESTED THERE ON THE BOARD.

PROSPECTIVE JUROR 013: MY NAME IS 013. I LIVE IN REDONDO BEACH; MARRIED; SIX CHILDREN; HOUSEWIFE.

MY HUSBAND IS RETIRED.

I HAVE NO PREVIOUS EXPERIENCE WITH THE JURY.

THE COURT: WHAT DID YOUR HUSBAND DO BEFORE HE RETIRED?

PROSPECTIVE JUROR 013: HE WAS AN ENGINEER, SUPERVISORING ENGINEER FOR GENERAL TELEPHONE.

THE COURT: ARE ALL OF YOUR SIX CHILDREN WORKING?

PROSPECTIVE JUROR 013: YES -- WELL, YES. I WILL [23] SAY YES. ONE OF THEM IS STILL IN COLLEGE, BUT SHE WORKS.

THE COURT: LET'S TALK ABOUT THE OTHER FIVE, THEN.

PROSPECTIVE JUROR 013: THE OLDEST ONE LIVES IN TORRANCE, HAS A JOB.

THE COURT: I JUST NEED TO KNOW THE OCCUPATIONS.

PROSPECTIVE JUROR 013: HE WORKS DOWN AT THE DOCKS IN SAN PEDRO OR LONG BEACH, SAN PEDRO, I THINK IT IS.

THE COURT: IS HE A LONGSHOREMAN?

PROSPECTIVE JUROR 013: NO. HE DOES DISPATCHER.

THE NEXT IS A CARPENTER; LIVES IN ORANGE COUNTY.

THE NEXT IS A HOUSEWIFE AND MOTHER; LIVES IN NORTHERN CALIFORNIA.

THE NEXT IS AN UNDERWRITER FOR AN INSURANCE COMPANY.

THE COURT: IS THAT A SON OR DAUGHTER?

PROSPECTIVE JUROR 013: A SON WHO LIVES IN ORANGE COUNTY.

FIBER OPTICS -- THIS IS A SON; LIVES IN ORANGE COUNTY.

THE YOUNGEST ONE IS A DAUGHTER AND SHE IS WORKING TOWARD HER PH.D.

THE COURT: THAT IS THE ONE WHO IS STILL A STUDENT?

PROSPECTIVE JUROR 013: YES.

THE COURT: THANK YOU, MS. 013.

PROSPECTIVE JUROR 002: MY NAME IS 002. I LIVE IN TORRANCE. I AM MARRIED; NO CHILDREN.

I WORK FOR A SYSTEMS INTEGRATOR, PUTTING IN COMPUTER SYSTEMS. I USED TO BE A CIVIL ENGINEER.

[24] MY HUSBAND IS A COMMERCIAL LOAN OFFICER FOR A BANK.

I HAVE NO PRIOR JURY EXPERIENCE.

PROSPECTIVE JUROR 003: MY NAME IS 003. I LIVE IN HARBOR CITY. I AM MARRIED, ONE CHILD; RETIRED MILITARY.

MY WIFE IS AN AIRCRAFT MECHANIC.

MY DAUGHTER IS IN COLLEGE.

I HAVE NO PREVIOUS JURY EXPERIENCE.

THE COURT: WHAT BRANCH OF SERVICE WERE YOU IN?

PROSPECTIVE JUROR 003: ARMY.

THE COURT: THANK YOU, 003.

PROSPECTIVE JUROR 004: MY NAME IS 004. I RESIDE IN REDONDO BEACH; MARRIED; ONE CHILD.

I WORK AT TOYOTA.

MY HUSBAND IS A SERVICE MANAGER FOR PANASONIC.

PRIOR JURY EXPERIENCE, SEVEN YEARS AGO I SERVED ON A JURY.

THE COURT: HOW MANY DIFFERENT CASES DID YOU SERVE ON?

PROSPECTIVE JUROR 004: NONE. I SERVED MY TEN DAYS.

THE COURT: WERE YOU CALLED FORWARD TO SIT IN THE JURY BOX?

PROSPECTIVE JUROR 004: YES, I WAS.

THE COURT: SO FAR WE HAVEN'T MADE ANY PROGRESS OVER THE LAST TIME.

PROSPECTIVE JUROR 005: MY NAME IS 005. I LIVE IN TORRANCE. I AM MARRIED; ONE CHILD. I AM A BUYER-PLANNER FOR AN ELECTRONICS FIRM.

[25] MY HUSBAND IS A WASTE WATER OPERATOR IN THE CITY OF L.A.

I HAVE NO PREVIOUS JURY EXPERIENCE.

PROSPECTIVE JUROR 006: MY NAME IS 006. I LIVE IN TORRANCE. I AM SINGLE; NEVER EMPLOYED; NO PRIOR JURY EXPERIENCE.

PROSPECTIVE JUROR 007: MY NAME IS 007. I LIVE IN LOMITA. I AM MARRIED WITH TWO CHILDREN. I WORK IN A MEDICAL PEDIATRIC OFFICE.

MY HUSBAND WORKS FOR TRIPLE A.

I HAVE NO PRIOR JURY EXPERIENCE.

PROSPECTIVE JUROR 008: MY NAME IS 008. I LIVE IN REDONDO BEACH; NO CHILDREN. I AM AN ACCOUNTANT FOR A COMPUTER COMPANY AND I HAVE HAD PRIOR JURY EXPERIENCE, ONE CIVIL CASE AND ONE CRIMINAL CASE.

THE COURT: WHAT WAS THE CHARGE IN THE CRIMINAL CASE?

PROSPECTIVE JUROR 008: I BELIEVE IT WAS DUI.

THE COURT: WAS THE JURY IN THE CRIMINAL CASE ABLE TO REACH A VERDICT?

PROSPECTIVE JUROR 008: NO, IT WAS NOT.

THE COURT: HOW ABOUT IN THE CIVIL CASE?

PROSPECTIVE JUROR 008: I WAS AN ALTERNATE IN THAT CASE AND THEY DID REACH A VERDICT.

THE COURT: LET ME ASK YOU, MS. 008, IF YOU WERE SELECTED TO SERVE ON THIS CASE, DO YOU

THINK YOU COULD DECIDE THIS CASE COMPLETELY INDEPENDENTLY OF THOSE OTHER TWO CASES?

PROSPECTIVE JUROR 008: YES.

[26] PROSPECTIVE JUROR 014: MY NAME IS 014. I LIVE IN TORRANCE. I AM SEPARATED WITH TWO TEENAGED CHILDREN.

I WORK FOR QUANTAS AIRWAYS.

MY EX-HUSBAND IS A CONTRACTOR AND I HAVE NOT BEEN ON A JURY BEFORE.

PROSPECTIVE JUROR 010: MY NAME IS 010. I LIVE IN TORRANCE. I AM MARRIED WITH TWO YOUNG CHILDREN.

I AM AN AIR CONDITIONING TECHNICIAN FOR A DEPARTMENT STORE. MY WIFE IS A SECRETARY FOR A CHURCH.

PREVIOUS EXPERIENCE, CRIMINAL TWO YEARS AGO, ASSAULT AND BATTERY.

THE COURT: DID THE JURY REACH VERDICTS?

PROSPECTIVE JUROR 010: NO.

THE COURT: IF YOU WERE SELECTED TO SERVE ON THIS CASE, DO YOU THINK YOU COULD DECIDE THIS CASE INDEPENDENTLY OF THAT LAST CASE?

PROSPECTIVE JUROR 010: I DON'T KNOW. I HAD PRETTY BAD FEELINGS ON THE LAST CASE. I CAME AWAY FEELING PRETTY BAD.

THE COURT: BASED ON WHAT HAPPENED DURING JURY DELIBERATIONS?

PROSPECTIVE JUROR 010: THAT AND THE CASE. BOTH SIDES, THEY KIND OF, IT LOOKED LIKE THE POLICE DEPARTMENT WAS TRYING TO DO THINGS THAT REALLY WEREN'T TOO AWFULLY NICE, AND THE OTHER SIDE, THERE REALLY WAS NOT ENOUGH EVIDENCE, BUT YET, LOOKING AT THE EVIDENCE, IT SEEMED OBVIOUS THAT IT WAS THERE. SO I DON'T KNOW. IT WASN'T A NICE EXPERIENCE.

THE COURT: DO YOU THINK THAT THAT EXPERIENCE MIGHT [27] COLOR HOW YOU WOULD APPROACH YOUR DUTIES IN THIS CASE?

PROSPECTIVE JUROR 010: I DON'T KNOW. I REALLY WALKED AWAY FEELING THAT I REALLY DIDN'T CARE TO SERVE AGAIN ON A CASE. HONESTLY, I DON'T KNOW.

AFTER TWO YEARS, IT IS STILL ON MY MIND. I THINK ABOUT IT FROM TIME TO TIME.

THE COURT: WOULD YOU FEEL MORE COMFORTABLE NOT SERVING ON THIS CASE?

PROSPECTIVE JUROR 010: PROBABLY SO.

THE COURT: COUNSEL, DO YOU STIPULATE THAT MR. 010 MAY BE EXCUSED?

MS. SATRIANO: YES, SO STIPULATED.

MS. NACHMAN: SO STIPULATED.

THE COURT: THANK YOU, MR. 010, FOR LETTING US KNOW THAT.

YOU ARE EXCUSED.

PROSPECTIVE JUROR 015: MY NAME IS 015. THE AREA THAT I LIVE IN CURRENTLY IS MANHATTAN BEACH. I AM SINGLE. MY OCCUPATION IS FULL-TIME STUDENT AND OFFICE ASSISTANT. I HAVE NO SPOUSE AND NO PRIOR JURY DUTY.

PROSPECTIVE JUROR 012: MY NAME IS 012. I LIVE IN TORRANCE. I AM MARRIED. I HAVE FIVE CHILDREN, FOUR IN NORTH CAROLINA AND ONE HERE IN CALIFORNIA.

I WORK WITH TRW. I AM A SYSTEMS ENGINEER.

I WAS IN THE AIR FORCE FOR 28 YEARS.

MY WIFE IS A HOMEMAKER.

MY CHILDREN IN NORTH CAROLINA ARE INVOLVED IN ELECTRONICS. AND I HAVE NO PRIOR JURY EXPERIENCE.

[27-A] THE COURT: THANK YOU, 012.

LADIES AND GENTLEMEN, I HAVE SOME ADDITIONAL QUESTIONS TO ASK YOU NOW. SOME ARE OF A MORE PERSONAL NATURE. FOR THAT REASON, IF THERE IS ANY QUESTION THAT YOU WOULD PREFER NOT TO ANSWER IN OPEN COURT SO THAT EVERYONE ELSE CAN HEAR YOU AND YOU WOULD RATHER DO SO AT THE SIDE BAR TO MY LEFT IN THE PRESENCE OF ONLY THE TWO ATTORNEYS, THE COURT REPORTER AND MYSELF, YOU MAY DO SO; JUST INDICATE THAT THAT IS YOUR PREFERENCE AND I WILL ACCOMMODATE YOU.

HAVE ANY OF YOU YOURSELVES EVER BEEN ACCUSED OF THE CRIME OF POSSESSION OF ROCK COCAINE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: HAVE ANY OF YOU YOURSELVES EVER BEEN ACCUSED OF ANY CRIME OF ILLEGAL POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: HAVE ANY OF YOU YOURSELVES EVER USED ROCK COCAINE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

[28] THE COURT: DO ANY OF YOU HAVE ANY RELATIVES OR CLOSE FRIENDS WHO HAVE USED ROCK COCAINE OR BEEN ACCUSED OF ANY CRIME THAT INVOLVED THE POSSESSION OF COCAINE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU HAVE FRIENDS, RELATIVES THAT HAVE EVER BEEN ACCUSED OF ANY CRIME INVOLVING THE USE OF DRUGS OR DRUG PARAPHERNALIA?

003, WHAT IS YOUR RELATIONSHIP TO THIS PERSON?

PROSPECTIVE JUROR 003: COUSIN.

THE COURT: HOW MANY DIFFERENT PEOPLE ARE WE TALKING ABOUT?

PROSPECTIVE JUROR 003: THREE.

THE COURT: WHEN WAS THE MOST RECENT TIME THAT ONE OF YOUR THREE COUSINS WAS ACCUSED OF COMMITTING SUCH A CRIME?

PROSPECTIVE JUROR 003: ABOUT FIVE YEARS AGO.

THE COURT: HOW OLD WERE YOU COUSINS, APPROXIMATELY AT THE TIME THIS HAPPENED?

PROSPECTIVE JUROR 003: I WOULD SAY HE WAS ABOUT IN HIS EARLY TWENTIES.

THE COURT: DID THIS ALL HAPPEN WHILE YOU WERE STILL IN THE SERVICE?

PROSPECTIVE JUROR 003: YES.

THE COURT: SO YOU HEARD ABOUT IT THROUGH THE FAMILY GRAPEVINE?

PROSPECTIVE JUROR 003: YES.

[29] THE COURT: HOW CLOSE WERE YOU AT THE TIME TO YOUR COUSINS?

PROSPECTIVE JUROR 003: WE GREW UP TOGETHER.

THE COURT: DID YOU HAVE A CHANCE TO TALK TO ANY OF YOUR COUSINS ABOUT ANY OF THEIR PROBLEMS EITHER AT OR APPROXIMATELY THE TIME WE ARE TALKING ABOUT OR SINCE THEN?

PROSPECTIVE JUROR 003: I DON'T THINK SO.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT THE RELATIONSHIP THAT YOU HAD WITH YOUR COUSINS EITHER THEN OR NOW OR ANYTHING YOU KNOW ABOUT IT, WHAT THEY WENT THROUGH WITH THE DRUG PROBLEMS THEY HAD THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 003: NO.

THE COURT: YOU CAN PUT ALL OF THAT COMPLETELY ASIDE AND BE AS OBJECTIVE ABOUT THAT AS ANY OTHER JUROR?

PROSPECTIVE JUROR 003: YES.

THE COURT: ANYBODY ELSE?

PROSPECTIVE JUROR 004: MY FATHER.

THE COURT: WHAT WAS YOUR FATHER'S PROBLEM?

PROSPECTIVE JUROR 004: IT WAS HE WAS ARRESTED FOR DRUGS, BUT THIS WAS WHEN HE WAS YOUNGER.

THE COURT: SO THIS WAS BEFORE HE BECAME YOUR FATHER?

PROSPECTIVE JUROR 004: YES.

THE COURT: THIS WAS SOMETHING THAT YOU FOUND OUT ABOUT AS YOU WERE GROWING UP?

PROSPECTIVE JUROR 004: YES. MY DAD IS 30 YEARS A RECOVERED ALCOHOLIC AND DRUG ADDICT.

THE COURT: WE ARE GETTING AHEAD A LITTLE BIT. [30] WE'LL GET TO THAT NOW ANYWAY.

IS THERE ANYTHING ABOUT ANY OF THE EXPERIENCES THAT YOU MIGHT HAVE HAD WITH YOUR FATHER AS YOU WERE GROWING UP IN THAT REGARD THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 004: NO.

PROSPECTIVE JUROR 014: YOU ASKED A QUESTION EARLIER AND I DIDN'T HAVE A CHANCE TO RESPOND.

I THINK YOU ASKED IF I KNEW ANYBODY WHO HAS EVER USED COCAINE. WAS THAT THE QUESTION, OR WAS IT SOMEBODY WHO WAS ACCUSED OF USING IT?

THE COURT: YES, BEEN ACCUSED OF USING IT, POSSESSING IT.

PROSPECTIVE JUROR 014: NO. I DON'T KNOW ANYBODY WHO HAS BEEN ACCUSED OF USING IT.

THE COURT: I HAVE TO ASK THE VERY NEXT QUESTION, THEN, MS. 014: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS OR FRIENDS WHO TO YOUR KNOWLEDGE ARE USERS OF ROCK COCAINE?

PROSPECTIVE JUROR 014: I KNOW PEOPLE THAT HAVE USED IT, BUT THEY DON'T DO IT ANYMORE.

THE COURT: HAVE YOU EVER TALKED TO ANY OF THEM ABOUT THEIR EXPERIENCES AT THE TIME?

PROSPECTIVE JUROR 014: YOU KNOW, WE TALKED ABOUT IT. AND IT IS A REGRETABLE THING.

THE COURT: DO YOU THINK THERE IS ANYTHING THAT YOU HAVE LEARNED ABOUT THE EXPERIENCES OF THESE OTHER PEOPLE THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

[31] PROSPECTIVE JUROR 014: NO.

THE COURT: HAVE ANY OF YOU YOURSELVES EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

APART FROM 004, DO ANY OF YOU HAVE ANY FRIENDS OR CLOSE FRIENDS WHO HAVE HAD ANY PROBLEM WITH DRUG OR ALCOHOL ABUSE, TO YOUR KNOWLEDGE?

013, DID YOU HAVE YOUR HAND UP?

PROSPECTIVE JUROR 013: YES, I HAVE.

THE COURT: WHO WAS THE PERSON THAT YOU ARE THINKING OF?

PROSPECTIVE JUROR 013: MY FATHER WHEN I WAS GROWING UP. AND ONE OF MY SONS HAD A PROBLEM.

THE COURT: A PROBLEM BEING WHAT?

PROSPECTIVE JUROR 013: ALCOHOL.

THE COURT: BOTH PEOPLE?

PROSPECTIVE JUROR 013: YES.

THE COURT: DO YOU THINK THERE IS ANYTHING THAT -- WELL, AS FAR AS YOUR FATHER WAS CONCERNED, WAS THAT A PROBLEM THAT WAS GOING ON THROUGHOUT THE TIME YOU WERE GROWING UP?

PROSPECTIVE JUROR 013: YES.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT YOUR EXPERIENCES WITH YOUR FATHER AS

YOU WERE GROWING UP THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 013: NO.

THE COURT: WHAT ABOUT ANY EXPERIENCES THAT YOU MIGHT HAVE HAD WITH YOUR SON?

PROSPECTIVE JUROR 013: THAT MIGHT. I WOULD SAY YES.

[32] THE COURT: IS THERE A PROBLEM THAT IS STILL GOING ON, AS FAR AS YOU KNOW?

PROSPECTIVE JUROR 013: IT IS HARD TO SAY. IT IS HARD TO SAY BECAUSE I DON'T SEE HIM ALL THE TIME. WHEN I SEE HIM, HE IS FINE.

THE COUIRT: WAS THERE EVER A TIME WHEN HE WAS ACCUSED OF COMMITTING ANY CRIME WHILE BEING UNDER THE INFLUENCE OF ALCOHOL SUCH AS DRIVING UNDER THE INFLUENCE?

PROSPECTIVE JUROR 03: YES.

THE COURT: WAS THAT WHILE HE WAS STILL A JUVENILE, OR AFTERWARD?

PROSPECTIVE JUROR 013: BOTH.

THE COURT: DID YOU HAVE TO GO DOWN TO THE POLICE STATION AND BAIL HIM OUT?

PROSPECTIVE JUROR 013: YES.

THE COURT: HAVING ALL OF THESE THINGS IN MIND, DO YOU THINK THEY WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

LET ME CHANGE MY QUESTION A LITTLE BIT; DO YOU THINK THEY MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 013: YES, THEY COULD.

THE COURT: I'M GOING TO EXCUSE YOU, THEN, MS. 013. THANK YOU.

MS. 008, YOU HAD YOUR HAND UP?

PROSPECTIVE JUROR 008: YES. I HAVE TWO OLD FRIENDS WHO HAVE EITHER A DRUG OR ALCOHOL PROBLEM.

THE COURT: IS THIS A PROBLEM THAT IS STILL ONGOING AS FAR AS YOU KNOW?

[33] PROSPECTIVE JUROR 008: IN BOTH CASES, I DON'T KNOW. I KNOW ONE IS.

THE COURT: IS THERE ANYTHING ABOUT THE RELATIONSHIP THAT YOU HAVE WITH EITHER OF THESE PERSONS OR ANYTHING ABOUT WHAT THEY HAVE GONE THROUGH THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 008: I HAVE DOUBTS.

THE COURT: DO YOU THINK YOU WOULD BE ABLE TO PUT THOSE DOUBTS ASIDE LONG ENOUGH TO OBJECTIVELY EVALUATE THE EVIDENCE IN THIS CASE?

PROSPECTIVE JUROR 008: TO EVALUATE THE EVIDENCE, YES, I COULD.

THE COURT: THANK YOU.

006.

PROSPECTIVE JUROR 006: MY UNCLE IS A RECOVERED ALCOHOLIC FOR THREE YEARS NOW.

THE COURT: HAVE YOU EVER DISCUSSED WITH HIM ANY OF HIS EXPERIENCES IN THAT AREA?

PROSPECTIVE JUROR 006: I GUESS NOT, REALLY. HE HAS TOLD ME SOME OF THE THINGS, STUFF, THAT HAPPENED TO HIM; NOT REALLY ASKING QUESTIONS OR REALLY BRINGING IT UP.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT THE RELATIONSHIP THAT YOU HAVE WITH YOUR UNCLE OR ANYTHING THAT HE HAS TOLD YOU ABOUT HIS ALCOHOL PROBLEM THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 006: I DON'T THINK SO.

THE COURT: IS THERE ANY QUESTION IN YOUR MIND?

PROSPECTIVE JUROR 006: NO.

[34] PROSPECTIVE JUROR 012: I HAD A TEENAGED DAUGHTER WHO WAS INVOLVED WITH USING MARIJUANA AS A TEENAGER.

THE COURT: HOW LONG AGO?

PROSPECTIVE JUROR 012: WE ARE TALKING A LONG TIME AGO; IT WOULD NOT AFFECT MY ABILITY TO SERVE.

THE COURT: THANK YOU, 012.

DID I MISS ANYONE?

PROSPECTIVE JUROR 014: MY DAUGHTER TOO HAS TRIED MARIJUANA.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT THAT FACT THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 014: NO.

THE COURT: DO ANY OF YOU HAVE ANY REASON TO BELIEVE THAT THERE IS DRUG DEALING GOING ON IN YOUR NEIGHBORHOOD?

008? WHAT HAVE YOU SEEN THAT LEADS YOU TO CONCLUDE THAT?

PROSPECTIVE JUROR 008: WELL, NEIGHBORS TOLD ME THAT THAT IS HAPPENING DOWN THE STREET FROM ME. AND YOU CAN HEAR PEOPLE SCREAMING AND YELLING LATE AT NIGHT FROM THAT AREA.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT THOSE FACTS THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

PROSPECTIVE JUROR 008: NO.

THE COURT: IS THERE ANYBODY ELSE?

IF YOU ARE SELECTED TO SERVE ON THIS CASE, ONE OF YOUR MOST IMPORTANT DUTIES WILL BE TO SERVE AS THE SOLE AND EXCLUSIVE JUDGES OF THE BELIEVABILITY OF ALL OF THE [35] WITNESSES THAT

ARE CALLED TO THE WITNESS STAND AS WELL AS DETERMINING THE WEIGHT AND SIGNIFICANCE TO BE GIVEN TO THAT TESTIMONY; I CAN TELL YOU THAT WE WILL BE HEARING IN THIS CASE FROM AT LEAST ONE POLICE OFFICER.

NOW, DO ANY OF YOU HAVE ANY TENDENCY TO GIVE THE TESTIMONY OF A POLICE OFFICER ANY GREATER WEIGHT OR SIGNIFICANCE THAN ANY OTHER PERSON JUST BECAUSE HE OR SHE IS A POLICE OFFICER?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU THINK THAT YOU WOULD HAVE THE OPPOSITE TENDENCY, THAT IS, TO GIVE SUCH TESTIMONY ANY LESSER WEIGHT OR

SIGNIFICANCE JUST BECAUSE HE OR SHE IS A POLICE OFFICER?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: HAVE ANY OF YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS SO POSITIVE OR SO NEGATIVE THAT YOU WOULD HAVE DIFFICULTY IN BEING OBJECTIVE IN EVALUATING THE TESTIMONY OF A POLICE OFFICER?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

[36] THE COURT: HAVE ANY OF YOU YOURSELVES EVER BEEN EMPLOYED AT ANY TIME IN THE PAST IN THE CAPACITY OF A LAW ENFORCEMENT AGENCY?

BY LAW ENFORCEMENT AGENCY, I AM INCLUDING POLICE DEPARTMENT, SHERIFF'S DEPARTMENT, MARSHAL'S OFFICE, HIGHWAY PATROL, STATE POLICE, MILITARY POLICE, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF THE YOUTH AUTHORITY, PROBATION DEPARTMENT, DISTRICT ATTORNEY'S OFFICE, CITY ATTORNEY'S OFFICE, UNITED STATES ATTORNEY'S OFFICE, FEDERAL BUREAU OF INVESTIGATION, INTERNAL REVENUE SERVICE, SECRET SERVICE, SECURITY GUARD OF ANY NATURE, ANYTHING OF THAT SORT? IF SO, WOULD YOU RAISE YOUR HANDS, PLEASE.

002.

PROSPECTIVE JUROR 002: I WAS A COMMUNITY SERVICE OFFICER AT THE SCHOOL AND WE WOULD

WALK THE PEOPLE BACK AND FORTH BETWEEN THE DORMS AND THE CLASSES THROUGH THE POLICE DEPARTMENT.

THE COURT: OTHER THAN ESCORTING PEOPLE BACK AND FORTH FROM THE DORMS, DID YOU HAVE ANY OTHER RESPONSIBILITIES?

PROSPECTIVE JUROR 002: NO.

THE COURT: DID YOU WEAR ANY KIND OF UNIFORM?

PROSPECTIVE JUROR 002: A SHIRT.

THE COURT: WAS THERE ANYTHING ABOUT THAT EXPERIENCE THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN A CRIMINAL CASE OR TO OBJECTIVELY EVALUATE THE TESTIMONY OF ANY POLICE OFFICERS THAT MIGHT TESTIFY?

PROSPECTIVE JUROR 002: NO.

PROSPECTIVE JUROR 012: I SERVED 20 YEARS AGO AS A [37] SPECIAL AGENT IN THE AIR FORCE SPECIAL INVESTIGATIONS.

THE COURT: IS THIS SOMETHING THAT YOU CAN TALK ABOUT?

PROSPECTIVE JUROR 012: IT IS EQUIVALENT TO THE FEDERAL BUREAU OF INVESTIGATION.

THE COURT: I TAKE IT FROM TIME TO TIME, YOU DID INVOLVE YOURSELF IN CRIMINAL INVESTIGATIONS?

PROSPECTIVE JUROR 012: I DID.

THE COURT: DID YOU EVER HAVE TO TESTIFY AS A WITNESS IN REGARD TO ANY OF YOUR INVESTIGATIONS?

PROSPECTIVE JUROR 012: YES.

THE COURT: MORE THAN ONCE?

PROSPECTIVE JUROR 012: TOTAL TIME, TWICE --I'M SORRY -- THREE TIMES.

THE COURT: DID YOU DEVELOP A CLOSE WORKING RELATIONSHIP WITH ANY OTHER FEDERAL LAW ENFORCEMENT AGENTS?

PROSPECTIVE JUROR 012: YES.

THE COURT: DO YOU THINK THERE WAS ANYTHING ABOUT ANY OF YOUR EXPERIENCES, MR. 012, THAT MIGHT AFFECT YOUR ABILITY TO OBJECTIVELY EVALUATE THE TESTIMONY OF A POLICE OFFICER?

PROSPECTIVE JUROR 012: NO.

THE COURT: TO BE FAIR AND IMPARTIAL IN A CRIMINAL CASE?

PROSPECTIVE JUROR 012: I WOULD BE FAIR AND IMPARTIAL.

THE COURT: MR. 003.

PROSPECTIVE JUROR 003: AS A SERGEANT IN EUROPE, I USED TO ESCORT PRISONERS.

[38] THE COURT: WERE YOU IN THE MILITARY POLICE?

PROSPECTIVE JUROR 003: NO. AS A SERGEANT, THAT IS ONE OF OUR DUTIES, TO ESCORT PRISONERS BACK AND FORTH TO THE PRISON, TO BRING THEM BACK TO THE CITY FOR TESTIMONY.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT ANY OF YOUR EXPERIENCES IN THAT REGARD THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 003: NO.

THE COURT: THANK YOU, 003.

DO ANY OF YOU HAVE ANY RELATIVES OR CLOSE FRIENDS THAT ARE NOW OR HAVE BEEN EMPLOYED IN ANY LAW ENFORCEMENT CAPACITY, AS FAR AS YOU KNOW?

PROSPECTIVE JUROR 007: I HAVE A FRIEND WHO IS A LONG BEACH POLICE OFFICER.

THE COURT: IS THIS A CLOSE FRIEND?

PROSPECTIVE JUROR 007: PRETTY CLOSE.

THE COURT: HAVE YOU EVER TALKED TO THIS FRIEND ABOUT ANY DUTIES OR EXPERIENCES?

PROSPECTIVE JUROR 007: NOT ON WHAT HE -- I JUST KNOW THAT HE IS A POLICE OFFICER. I DON'T KNOW WHAT HE REALLY, YOU KNOW, ABOUT WHAT HE DOES DURING THE DAY OR IN GENERAL WHAT HE DOES.

THE COURT: BUT DO YOU THINK THERE IS ANYTHING THAT THE TWO OF YOU TALKED ABOUT THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 007: NO.

THE COURT: OR AFFECT YOUR ABILITY TO OBJECTIVELY EVALUATE THE TESTIMONY OF A POLICE OFFICER?

[39] PROSPECTIVE JUROR 007: NO.

THE COURT: 014.

PROSPECTIVE JUROR 014: MY BROTHER USED TO BE A POLICEMAN FOR COSTA MESA. HE IS NO LONGER WITH THEM.

I ALSO KNOW A COUPLE OF ATTORNEYS, POLICE OFFICERS, AS FRIENDS.

THE COURT: HAVE YOU EVER TALKED TO ANY OF THESE PEOPLE ABOUT ANY OF THEIR PROFESSIONAL DUTIES OR RESPONSIBILITIES?

PROSPECTIVE JUROR 014: YES.

THE COURT: DO YOU THINK THERE IS ANYTHING THAT YOU HAVE TALKED TO THEM ABOUT THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN A CRIMINAL CASE OR THAT MIGHT AFFECT YOUR ABILITY TO OBJECTIVELY EVALUATE THE TESTIMONY OF A POLICE OFFICER?

PROSPECTIVE JUROR 014: NO.

THE COURT: NOW, POSSESSION OF DRUGS IS SOMETIMES REFERRED TO AS A VICTIMLESS CRIME; YOU ARE NOT GOING TO HEAR ANY TESTIMONY IN THIS CASE ABOUT ANYBODY BEING SHOT, STABBED; NOBODY HAD ANY PROPERTY TAKEN FROM THEM; AS A CONSEQUENCE, THERE ARE PEOPLE THAT ARE OF THE VIEW THAT AS FAR AS THIS TYPE OF CHARGE IS CONCERNED, THAT THIS TYPE OF CONDUCT REALLY SHOULD NOT BE AGAINST THE LAW; DO ANY OF YOU FEEL THAT WAY?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: DO ANY OF YOU THINK THAT THE POLICE ARE [40] WASTING THEIR TIME ENFORCING THIS TYPE OF LAW WHEN THEY HAVE MORE IMPORTANT THINGS TO DO?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: LET'S CALL TWO OTHER NAMES, PLEASE.

THE CLERK: JUROR NO. 1, 016.

JUROR NO. 10, 017.

THE COURT: GOOD AFTERNOON, MS. 016.

GOOD AFTERNOON, MS. 017.

MS. 016, HAVE YOU BEEN ABLE TO HEAR ALL OF THE QUESTIONS THAT I HAVE ASKED THUS FAR?

PROSPECTIVE JUROR 016: YES, I HAVE.

THE COURT: IF I WERE TO ASK YOU THE SAME QUESTIONS I HAVE ASKED THE OTHER PROSPECTIVE JURORS OR SUBSTANTIALLY SIMILAR ONES, DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THEM HAVE?

PROSPECTIVE JUROR 016: NO.

THE COURT: WHAT ABOUT YOU, 017?

PROSPECTIVE JUROR 017: NOT AS TO ANYTHING YOU HAVE ASKED SO FAR.

THE COURT: DO YOU KNOW ANYTHING ABOUT THIS CASE, MS. 016, OTHER THAN WHAT YOU HAVE PICKED UP FROM SITTING IN THE AUDIENCE TODAY?

PROSPECTIVE JUROR 016: NO.

THE COURT: WHAT ABOUT YOU, MS. 017?

PROSPECTIVE JUROR 017: NO.

[41] THE COURT: DO YOU KNOW ANYBODY THAT HAS BEEN IDENTIFIED AT COUNSEL TABLE, MS. 016?

PROSPECTIVE JUROR 016: NO.

THE COURT: 017?

PROSPECTIVE JUROR 017: NO.

THE COURT: IS THERE ANYTHING ABOUT THE NATURE OF THE CHARGE OF POSSESSION OF ROCK COCAINE, MS. 016, THAT MIGHT MAKE IT DIFFICULT FOR YOU TO SIT ON THIS CASE?

PROSPECTIVE JUROR 016: NO.

THE COURT: 017?

PROSPECTIVE JUROR 017: NO.

THE COURT: WOULD YOU BE ABLE TO STAY WITH US THROUGH THE END OF THE WEEK, 016?

PROSPECTIVE JUROR 016: YES.

THE COURT: MS. 017?

PROSPECTIVE JUROR 017: YES.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF, MS. 016?

PROSPECTIVE JUROR 016: YES.

THE COURT: MS. 017?

PROSPECTIVE JUROR 017: YES.

THE COURT: WOULD YOU BE ABLE TO DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW AND WITHOUT REGARD TO ANY PERSONAL FEELINGS, MS. 016?

PROSPECTIVE JUROR 016: YES.

THE COURT: MS. 017?

PROSPECTIVE JUROR 017: YES.

[42] THE COURT: MS. 016, WOULD YOU GIVE US THE INFORMATION ON THE BOARD?

PROSPECTIVE JUROR 016: MY NAME IS 016. I LIVE IN INGLEWOOD. I AM SINGLE. I HAVE NO CHILDREN. I AM AN AUTOMATIONS CLERK FOR THE FEDERAL AVIATION ADMINISTRATION.

I HAVE NO PRIOR JURY EXPERIENCE.

PROSPECTIVE JUROR 017: MY NAME IS 017. I LIVE IN TORRANCE. I AM MARRIED. I HAVE TWO GROWN CHILDREN LIVING IN REDDING.

MY HUSBAND IS A RETIRED SHEET METAL MECHANIC AND I AM A HOUSEWIFE.

I HAVE BEEN ON TWO DRUNK DRIVING AND ONE MALPRACTICE SUIT.

THE COURT: AS FAR AS THE TWO DUI CASES WERE CONCERNED, WAS THE JURY ABLE TO REACH VERDICTS, MS. 017?

PROSPECTIVE JUROR 017: YES.

THE COURT: IF YOU WERE SELECTED TO SERVE ON THIS CASE, DO YOU THINK YOU COULD DECIDE THIS CASE INDEPENDENTLY OF THOSE THREE OTHER CASES?

PROSPECTIVE JUROR 017: YES.

THE COURT: ARE YOUR TWO CHILDREN IN REDDING WORKING?

PROSPECTIVE JUROR 017: MY ONE SON IS A ROOF AND GUTTER CONTRACTOR. AND MY OTHER SON WORKS FOR HIM.

THE COURT: MS. 016, WITH REGARD TO THE VARIOUS QUESTIONS THAT I ASKED ABOUT DRUGS, AND DRUG USAGE, IS THERE ANYONE CLOSE TO YOU THAT HAS EVER BEEN ACCUSED OF COMMITTING

ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

[43] PROSPECTIVE JUROR 016: NO.

THE COURT: WHAT ABOUT YOU, 017?

PROSPECTIVE JUROR 017: I THINK MY OLDEST SON HAD A DRUNK DRIVING YEARS AGO.

THE COURT: DID HE EVER DISCUSS THE INCIDENT WITH YOU?

PROSPECTIVE JUROR 017: NO.

THE COURT: IS THERE ANYTHING ABOUT THAT EXPERIENCE THAT MIGHT AFFECT YOU ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 017: NO.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS IN YOUR NEIGHBORHOOD, MS. 016?

PROSPECTIVE JUROR 016: NO.

THE COURT: MS. 017?

PROSPECTIVE JUROR 017: NO.

THE COURT: DO YOU THINK THAT POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW, MS. 016?

PROSPECTIVE JUROR 016: YES.

THE COURT: DO YOU, MS. 017?

PROSPECTIVE JUROR 017: YES.

THE COURT: HAVE YOU YOURSELF OR ANYONE CLOSE TO YOU, MS. 016, THAT HAS EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 016: NO.

THE COURT: HOW ABOUT YOU, MS. 017?

PROSPECTIVE JUROR 017: OUTSIDE OF MY SON HAVING THAT ONE DUI, I DON'T THINK HE DRINKS NOW AND DRIVES.

THE COURT: MS. 016, HAVE YOU EVER BEEN EMPLOYED IN [44] LAW ENFORCEMENT?

PROSPECTIVE JUROR 016: NO.

THE COURT: HAS ANYONE CLOSE TO YOU?

PROSPECTIVE JUROR 016: NO.

THE COURT: MS. 017, HAVE YOU?

PROSPECTIVE JUROR 017: NO.

THE COURT: ANYONE CLOSE TO YOU THAT HAS?

PROSPECTIVE JUROR 017: NO.

THE COURT: AS FAR AS ALL 12 OF YOU ARE CONCERNED, LADIES AND GENTLEMEN, CAN ANY OF YOU THINK OF ANY REASON YOU COULD NOT BE FAIR AND IMPARTIAL JURORS IN THIS CASE?

(THE PROSPECTIVE JURY PANEL ANSWERED IN THE NEGATIVE.)

THE COURT: COUNSEL, APPROACH THE BENCH.

(THE FOLLOWING PROCEEDINGS WERE HELD AT THE BENCH:)

THE COURT: MS. NACHMAN, DO YOU HAVE ANY ADDITIONAL QUESTIONS FOR CAUSE?

MS. NACHMAN: THE COURT DIDN'T MENTION WHETHER OR NOT THEY HAVE PRIORS, STARTING WITH MS. 001 UNTIL WE GOT TO MS. 004, OTHER PRIOR JURY EXPERIENCE. I THINK THEY WERE OVERLOOKING IT.

THE COURT: DO YOU OTHERWISE PASS FOR CAUSE?

MS NACHMAN: YES.

[45-46] THE COURT: MS. SATRIANO?

MS. SATRIANO: I WAS GOING TO ASK HAS ANYBODY BEEN ARRESTED FOR ANY CRIME OR HAVE ANY EXPERIENCE WITH LAW ENFORCEMENT GOOD OR BAD.

THE COURT: WELL, I ALREADY ASKED ABOUT EXPERIENCES WITH LAW ENFORCEMENT. I AM NOT

GOING TO ASK WHETHER THEY HAVE BEEN ARRESTED FOR ANYTHING.

MS. SATRIANO: I MEANT IN RELATION TO THE -- THEY HAVE BEEN ASKED ABOUT LAW ENFORCEMENT IN GENERAL OR JUST THAT THEY KNEW ANYBODY. I DIDN'T HEAR THE QUESTION.

THE COURT: I THINK I ASKED THAT.

ALL RIGHT.

MS. SATRIANO: I MISSED THAT.

I DON'T KNOW IF THE DISTINCTION BETWEEN CIVIL AND THE BURDEN OF PROOF, BECAUSE WE HAVE ONE LADY THAT HAS SERVED ON A CIVIL JURY.

THE COURT: WELL, DIDN'T I TALK TO THEM ABOUT THE BURDEN OF PROOF?

MS. SATRIANO: YES.

THE COURT: ANY OTHER QUESTIONS?

MS. SATRIANO: WERE THERE ANY OF THEM THAT HAVE BEEN VICTIMS OF CRIME AND WHAT KINDS OF EXPERIENCES THEY HAVE IN RELATION TO THAT?

THE COURT: I AM NOT GOING TO ASK THAT.

ARE THERE ANY OTHER QUESTIONS?

MS. SATRIANO: JUROR NO. 8 SAID THAT SHE HAD DOUBTS THAT SHE COULD BE IMPARTIAL AND YOU ASKED WHETHER SHE COULD LISTEN TO THE EVIDENCE. AFTER THAT, THAT WAS THE ONLY [47] FOLLOWUP QUESTION. I DON'T KNOW THAT SHE EXPLAINED WHY SHE HAD DOUBTS AS TO WHETHER SHE COULD BE IMPARTIAL.

MS. :NACHMAN: SHE DID SAY SHE COULD LISTEN TO THE EVIDENCE OBJECTIVELY.

THE COURT: I WILL NOT ASK ANY ADDITIONAL QUESTIONS OF MS. 008 IN THAT AREA.

DO YOU PASS FOR CAUSE?

MS. SATRIANO: PASS FOR CAUSE.

(THE PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE OF THE JURY AS FOLLOWS:)

THE COURT: MS. 002, DID YOU TELL US WHETHER YOU HAD BEEN ON A JURY BEFORE?

PROSPECTIVE JUROR 002: YES, I DID.

I HAVE NEVER BEEN ON A JURY BEFORE.

THE COURT: MR. 003. WHAT ABOUT YOU?

PROSPECTIVE JUROR 003: NO.

THE COURT: THE FIRST PEREMPTORY CHALLENGE THEN IS WITH THE PEOPLE.

MS. SATRIANO: THANK AND EXCUSE JUROR NO. 8.

the court; 008, THANK YOU FOR YOUR SERVICE. YOU ARE EXCUSED.

THE CLERK: 018.

THE COURT: GOOD AFTERNOON, 018. HAVE YOU HEARD ALL OF THE QUESTIONS?

PROSPECTIVE JUROR 018: YES, I HAVE.

[48] THE COURT: IF I WERE TO ASK YOU THE SAME OR SUBSTANTIALLY SIMILAR QUESTIONS, DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 018: NO, I WOULDN'T.

THE COURT: AND CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 018: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION THERE ON THE BOARD?

PROSPECTIVE JUROR 018: MY NAME IS 018. I LIVE IN RANCHO PALOS VERDES. I AM MARRIED WITH THREE GROWN CHILDREN.

I WAS FORMERLY A TEACHER; I AM NOW AT HOME.

MY HUSBAND IS A PHYSICIAN. HE IS THE HEAD OF THE TRAINING PROGRAM FOR INTERNS AND RESIDENTS.

I HAVE HAD NO PRIOR JURY EXPERIENCE.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 018: YES.

THE COURT: COULD YOU DECIDE THIS SOLELY ON THE EVIDENCE AND INSTRUCTIONS OF LAW AND WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 018: YES.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 018: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

[49] PROSPECTIVE JUROR 018: NO.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU EVER BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

PROSPECTIVE JUROR 018: NO.

THE COURT: DO YOU THINK THAT POSSESSION OF COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 018: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 018: NO.

THE COURT: THANK YOU, 018.

MS. NACHMAN, DO YOU PASS FOR CAUSE AS TO 018?

MS. NACHMAN: YES, BUT I DON'T BELIEVE -- MAYBE I DIDN'T HEAR IT, WHAT HER GROWN CHILDREN DID.

PROSPECTIVE JUROR 018: OUR SON IS AN INTERN IN MEDICINE IN NORTHERN CALIFORNIA.

WE HAVE ONE DAUGHTER WHO IS LOOKING FOR A JOB AFTER GETTING HER MASTERS DEGREE AND THE THIRD ONE IS JUST GOING BACK TO SCHOOL TO GET A BS DEGREE IN COLORADO.

THE COURT: WHAT WAS IT THAT YOU FORMERLY TAUGHT?

PROSPECTIVE JUROR 018: ENGLISH.

THE COURT: AND AT THE JUNIOR HIGH SCHOOL OR HIGH SCHOOL LEVEL?

PROSPECTIVE JUROR 018: JUNIOR HIGH.

THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES.

THE COURT: THE PEREMPTORY IS WITH THE DEFENSE.

[50] MS. NACHMAN: THE DEFENSE WOULD ASK THE COURT TO THANK AND EXCUSE JUROR NO. 12, YOUR HONOR.

THE COURT: THANK YOU, 012. YOU ARE EXCUSED.

THE CLERK: 019.

THE COURT: GOOD AFTERNOON, 019.

HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 019: YES.

THE COURT: IF I WAS TO ASK YOU THE SAME OR SIMILAR QUESTIONS, DO YOU THINK YOU WOULD ANSWER THEM ANY DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 019: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 019: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD, PLEASE?

PROSPECTIVE JUROR 019: MY NAME IS 019. I LIVE IN INGLEWOOD. I AM SINGLE, RETIRED. I HAVE SEVEN KIDS.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: WHAT WAS YOUR OCCUPATION BEFORE YOU RETIRED?

PROSPECTIVE JUROR 019: A NURSE.

THE COURT: AND ARE YOUR CHILDREN WORKING?

PROSPECTIVE JUROR 019: YES.

THE COURT: CAN YOU GIVE US THEIR OCCUPATIONS, PLEASE?

PROSPECTIVE JUROR 019: THE OLDEST ONE IS A COMPUTER MANAGER FOR A COMPANY IN VAN NUYS.

ANOTHER ONE IS A CLINICAL SOCIAL WORKER, WORKS [51] FOR HERSELF NOW.

ONE SON HAS HIS OWN MECHANIC SHOP; ONE DOES NOT WORK. THE OTHER ONE IS IN ARIZONA WORKING FOR MCDONNELL DOUGLAS.

THE YOUNGEST IS AT HOME WITH FIVE KIDS.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 019: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 019: NO.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUGS OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 019: MY YOUNGEST DAUGHTER HAD A PROBLEM WITH DRUGS.

THE COURT: WHAT KINDS OF DRUGS?

PROSPECTIVE JUROR 019: I HAVE NO IDEA.

THE COURT: HOW DID YOU FIND OUT ABOUT THE PROBLEM?

PROSPECTIVE JUROR 019: I WAS INVOLVED IN IT. I HAD TO HELP HER. SHE IS THE ONE WITH THE KIDS. I THINK IT WAS COCAINE.

THE COURT: WAS IT ROCK COCAINE?

PROSPECTIVE JUROR 019: NO.

THE COURT: HOW LONG AGO DID THAT HAPPEN?

PROSPECTIVE JUROR 019: SHE IS TWO YEARS CLEAN.

THE COURT: WAS THERE EVER A TIME WHEN SHE WAS ARRESTED AND ACCUSED OF COMMITTING SOME CRIME THAT INVOVLED [52] THE USE OF DRUGS?

PROSPECTIVE JUROR 019: NO, I DON'T THINK SO.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT YOUR RELATIONSHIP WITH YOUR DAUGHTER OR WHAT SHE HAS GONE THROUGH RECENTLY THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 019: NO, I DON'T THINK SO.

THE COURT: YOU CAN PUT THAT ASIDE AND BE AS OBJECTIVE AS ANY OTHER JURORS?

PROSPECTIVE JUROR 019: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 019: I HAVE NO REASON TO BELIEVE THAT.

THE COURT: THANK YOU, MS. 019.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: YES.

THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES.

THE COURT: THE PEREMPTORY IS WITH THE PEOPLE.

MS. SATRIANO: THE PEOPLE WOULD ASK THE COURT TO PLEASE THANK AND EXCUSE JUROR NO. 6.

THE COURT: THANK YOU, MR. 006. YOU ARE EXCUSED.

THE CLERK: 020.

THE COURT: GOOD AFTERNOON, 020. HAVE YOU HEARD THE QUESTIONS?

PROSPECTIVE JUROR 020: YES, I HAVE.

THE COURT: IF I WERE TO ASK YOU THE SAME OR SIMILAR [53] QUESTIONS, DO YOU THINK YOU WOULD ANSWER ANY OF THEM DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 020: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 020: YES, I CAN.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD, PLEASE?

PROSPECTIVE JUROR 020: MY NAME IS 020. I LIVE IN RANCHO PALOS VERDES. I AM MARRIED WITH TWO GROWN CHILDREN. I AM AN ACCOUNTANT.

I HAVE HAD NO MILITARY EXPERIENCE.

MY HUSBAND IS AN ENGINEER AND MY OLDEST DAUGHTER IS A MANAGER FOR TRW.

MY SON IS IN COLLEGE.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: DO YOU THINK THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 020: YES, I DO.

THE COURT: COULD YOU DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 020: YES, I CAN.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 020: NO, I DON'T.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

[54] PROSPECTIVE JUROR 020: NO, I HAVEN'T.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUGS OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 020: NO, NOBODY HAS.

THE COURT: OR BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

PROSPECTIVE JUROR 020: NO.

THE COURT: DO YOU THINK THAT THE POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 020: YES.

THE COURT: THANK YOU, 020.

MKS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: YES.

THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES.

THE COURT: THE PEREMPTORY IS WITH THE DEFENSE.

MS. NACHMAN: MAY I HAVE A MOMENT?

THE COURT: YES.

MS. NACHMAN: THE DEFENSE WOULD ASK THE COURT TO THANK AND EXCUSE JUROR NO. 7.

THE COURT: THANK YOU, MS. 007 FOR YOUR SERVICE. YOU ARE EXCUSED.

THE CLERK: 021.

THE COURT: MS. 021, HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 021: YES, SIR.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS?

[55] PROSPECTIVE JUROR 021: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 021: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD, PLEASE?

PROSPECTIVE JUROR 021: MY NAME IS 021. I LIVE IN CARSON. I AM MARRIED WITH TWO SMALL CHILDREN. I AM A CUSTOMER SUPPORT SPECIALIST FOR A MAIL COMPANY.

MY HUSBAND WSA PREVIOUSLY IN THE AIR FORCE WORKING ON THE SPACE SHUTTLE. HE IS NOW AN ANALYST FOR A COMPANY THAT WORKS FOR THE DEPARTMENT OF DEFENSE.

I HAVE HAD A MURDER TRIAL AND A BURGLARY TRIAL.

THE COURT: WERE THE JURIES ABLE TO REACH VERDICTS?

PROSPECTIVE JUROR 021: YES.

THE COURT: IF YOU WERE SELECTED TO SERVE ON THIS CASE, DO YOU THINK YOU COULD DECIDE

THIS CASE INDEPENDENTLY OF THOSE OTHER TWO CASES?

PROSPECTIVE JUROR 021: YES.

THE COURT: DO YOU HAVE ANY FRIENDS OR RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 021: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 021: NO.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 021: MY IN-LAWS DO DRUGS. I DON'T KNOW IF THEY DO RECENTLY OR NOT. THEY

LIVE IN ANOTHER [56] STATE. THEY HAVE BEEN INVOLVED IN THAT.

THE COURT: WHAT TYPE OF DRUG IS THAT?

PROSPECTIVE JUROR 021: AS FAR AS I KNOW, IT IS MARIJUANA. THERE MAY BE MORE THAN THAT. I AM NOT SURE.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT YOUR RELATIONSHIP WITH YOUR IN-LAWS OR ANY OF THEIR HABITS THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE?

PROSPECTIVE JUROR 021: NO.

THE COURT: DO YOU THINK THE POSSESSION OF COCAINE OR ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 0021: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 021: NO.

THE COURT: THANK YOU, 021.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: PASS FOR CAUSE, YOUR HONOR.

MS. SATRIANO: PASS FOR CAUSE, YOUR HONOR.

THE COURT: THE PEREMPTORY IS WITH THE PEOPLE.

MS. SATRIANO: THE PEOPLE WOULD ASK THE COURT TO PLEASE THANK AND EXCUSE JUROR 16.

THE COURT: THANK YOU, MS. 016. YOU ARE EXCUSED.

THE CLERK: 022.

THE COURT: GOOD AFTERNOON, 022.

HAVE YOU HEARD ALL OF THE QUESTIONS?

PROSPECTIVE JUROR 022: YES, I HAVE.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY [57] QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 022: YES. ABOUT A PARTICULAR LY POSITIVE OR PARTICULARLY NEGATIVE INCIDENT WITH A POLICE OFFICER, I THINK I HAVE HAD BOTH.

THE COURT: DO YOU THINK THAT ANY OF THOSE EXPERIENCES, BE THEY POSITIVE OR NEGATIVE, MIGHT AFFECT YOUR ABILITY TO OBJECTIVELY EVALUATE THE TESTIMONY OF A POLICE OFFICER?

PROSPECTIVE JUROR 022: NO, I DO NOT.

THE COURT: ARE THERE ANY QUESTIONS THAT YOU WOULD HAVE ANSWERED DIFFERENTLY?

PROSPECTIVE JUROR 022: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 022: YES, I CAN.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD, PLEASE?

PROSPECTIVE JUROR 022: MY NAME IS 022. I LIVE IN REDONDO BEACH. I AM DIVORCED, NO CHILDREN. I AM SELF-EMPLOYED IN THE READY-MIX CONCRETE BUSINESS.

MY EX IS UNEMPLOYED.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 022: NO, I DO NOT.

THE COURT: HAVE YOU OR HAS ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 022: YES, A COUSIN, BROTHER ALCOHOL.

[58] THE COURT: BOTH?

PROSPECTIVE JUROR 022: YES.

THE COURT: AS FAR AS YOU KNOW, HAVE THEY BEEN ACCUSED OF COMMITTING ANY CRIME AT A TIME WHEN THEY WERE UNDER THE INFLUENCE OF ALCOHOL?

PROSPECTIVE JUROR 022: NO, THEY HAVE NOT.

THE COURT: IS THERE ANYTHING ABOUT ANY OF YOUR EXPERIENCES WITH EITHER OF THEM OR YOUR RELATIONSHIP THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 022: NO.

THE COURT: DO YOU THINK THAT THE POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 022: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 022: NO.

THE COURT: THANK YOU, 022.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: PASS FOR CAUSE, YOUR HONOR.

MS. SATRIANO: PASS FOR CAUSE, YOUR HONOR.

THE COURT: THE PEREMPTORY IS WITH THE DEFENSE.

MS. NACHMAN: THE DEFENSE WOULD ASK THE COURT TO THANK AND EXCUSE 021.

THE COURT: THANK YOU FOR YOUR SERVICE, 021. YOU ARE EXCUSED.

THE CLERK: 023.

THE COURT: GOOD AFTERNOON, 023.

[59] HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 023: YES.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY QUESTIONS DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 023: YES, YOUR HONOR.

I HAVE A PERSONAL FEELING ABOUT THE SUBJECT MATTER OF DRUGS THAT LEADS ME TO BELIEVE THAT I COULDN'T BE IMPARTIAL AS A JUROR IN THIS CASE.

THE COURT: I APPRECIATE YOUR LETTING US KNOW THAT, SIR.

YOU ARE EXCUSED.

THE CLERK: 024.

THE COURT: GOOD AFTERNOON, 024.

HAVE YOU HEARD THE QUESTIONS?

PROSPECTIVE JUROR 024: YES.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS?

PROSPECTIVE JUROR 024: YES.

I'M GOING OUT OF TOWN FOR A WEDDING THURSDAY NIGHT. SO I WILL NOT BE HERE FRIDAY.

THE COURT: WELL, WE ARE GOING TO TAKE AN ALTERNATE: SO IF WE HAVE TO, WE'LL JUST LET YOU GO.

ARE THERE ANY OTHER QUESTIONS THAT YOU WOULD HAVE ANSWERED DIFFERENTLY?

PROSPECTIVE JUROR 024: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 024: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON [60] THE BOARD?

PROSPECTIVE JUROR 024: MY NAME IS 024. I LIVE IN HERMOSA BEACH. I AM SINGLE; CURRENTLY I AM A HIGH SCHOOL TEACHER AND BEFORE THAT, I WORKED AS AN ACCOUNTANT AT A BIG ACCOUNTING FIRM AND I DO NOT HAVE ANY PRIOR JURY EXPERIENCE.

THE COURT: WHAT SUBJECT MATTER DO YOU TEACH?

PROSPECTIVE JUROR 024: HISTORY AND ECONOMICS NEXT YEAR.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 024: YES.

THE COURT: COULD YOU DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW AND WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 024: YES.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 024: NO.

THE COURT: HAVE YOU EVER HAD ANY EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 024: NO.

THE COURT: HAVE YOU OR HAS ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 024: NO.

THE COURT: OR BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OF OR POSSESSION OF DRUGS OR DRUG [61] PARAPHERNALIA?

PROSPECTIVE JUROR 024: NO.

THE COURT: DO YOU THINK THE POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 024: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE IS DRUG DEALING GOING ON IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 024: NO.

THE COURT: THANK YOU, 024.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: MAY WE APPROACH?

(THE FOLLOWING PROCEEDINGS WERE AT THE BENCH:)

MS. NACHMAN: I HAVE A CONCERN ABOUT MS. 024 HAVING TO LEAVE TOWN THURSDAY NIGHT FOR A WEDDING.

I WON'T BE AVAILABLE MYSELF UNTIL 10:30. ALSO I AM SUPPOSED TO BE DOWNTOWN AT CCB FOR A SENTENCING THURSDAY MORNING. IF NEED BE, I CAN GET THAT CONTINUED OR HAVE SOMEONE STAND IN FOR ME.

I'M WONDERING ABOUT THE TIME CRUNCH. I HAVE TO BE FINISHED WITH THIS TRIAL BY FRIDAY. SO THE FACT THAT SHE IS GOING TO BE OUT OF TOWN BOTHERS ME.

ALSO, ON 022 --

THE COURT: WELL, WAIT A MINUTE. YOU ALREADY PASSED FOR CAUSE ON MR. 022.

NOW, AS FAR AS 024 IS CONCERNED --

[62] MS. NACHMAN: CERTAINLY, IT MAY WELL BE THAT THEY MAY BE DELIBERATING AT THAT POINT. SHE SAYS SHE IS LEAVING TOWN.

THE COURT: DO YOU STIPULATE MS. 024 BE EXCUSED?

MS. SATRIANO: SO STIPULATED, YOUR HONOR.

MS. NACHMAN: SO STIPULATED, YOUR HONOR.

(THE PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL AS FOLLOWS:)

THE COURT: MS. 024, OUT OF AN ABUNDANCE OF CAUTION, I AM GOING TO EXCUSE YOU.

THANK YOU.

THE CLERK: 025.

PROSPECTIVE JUROR 025: CAN I HAVE A SIDE BAR?

THE COURT: YES.

(THE FOLLOWING PROCEEDINGS WERE HELD AT THE BENCH:)

PROSPECTIVE JUROR 025: MY WIFE IS APPARENTLY BEING TREATED FOR CRACK AND MY FAMILY IS COMPLETELY DESTROYED OVER THIS. I DON'T THINK I CAN BE IMPARTIAL.

THE COURT: I APPRECIATE YOUR LETTING US KNOW THAT.

THANK YOU.

[63] (THE PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE OF

THE PROSPECTIVE JURY PANEL AS FOLLOWS:)

THE CLERK: 026.

THE COURT: GOOD AFTERNOON, MS. 026.

HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 026: YES.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 026: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 026: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD?

PROSPECTIVE JUROR 026: MY NAME IS 026. I LIVE IN LOMITA. I AM MARRIED; TWO GROWN CHILDREN. ONE IS A NURSE IN BAKERSFIELD AT KAISER

HOSPITAL; THE OTHER ONE, MY SON, IS IN THE MUSIC BUSINESS. AND I WORKED FOR TRW. I HAVE BEEN RETIRED FOR 11 YEARS.

I HAVE HAD JURY EXPERIENCE.

THE COURT: HOW MANY DIFFERENT CRIMINAL CASES, IF ANY?

PROSPECTIVE JUROR 026: TWO.

THE COURT: AND THE CHARGES IN THOSE CASES?

PROSPECTIVE JUROR 026: ONE WAS AGAINST THE CITY OF INGLEWOOD, DRUGS. AND THE OTHER WAS DRUNK DRIVING.

THE COURT: WAS THE JURY IN EACH OF THOSE CASES ABLE [64] TO REACH A VERDICT?

PROSPECTIVE JUROR 026: YES.

THE COURT: IF YOU WERE SELECTED TO SERVE ON THIS CASE, DO YOU THINK YOU COULD DECIDE THIS CASE INDEPENDENTLY OF ALL OF YOUR PREVIOUS JURY EXPERIENCES?

PROSPECTIVE JUROR 026: YES.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 026: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 026: NO.

THE COURT: HAVE YOU OR HAS ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 026: NOT TO MY KNOWLEDGE.

THE COURT: OR BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

PROSPECTIVE JUROR 026: NO.

THE COURT: DO YOU THINK THAT POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 026: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 026: NO.

THE COURT: MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: PASS FOR CAUSE, YOUR HONOR.

[65] THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES, YOUR HONOR. PASS FOR CAUSE.

THE COURT: THE PEREMPTORY IS WITH THE PEOPLE.

MS. SATRIANO: THE PEOPLE WOULD ASK THE COURT TO, PLEASE, THANK AND EXCUSE 019.

THE COURT: THANK YOU, MS. 019. FOR YOUR SERVICES. YOU ARE EXCUSED.

MS. NACHMAN: MAY WE APPROACH?

THE COURT: YES.

(THE FOLLOWING PROCEEDINGS WERE HELD AT THE BENCH:)

(THE FOLLOWING PAGES, 66 THROUGH 72, ARE PROCEEDINGS HELD PURSUANT TO A WHEELER MOTION AND ORDERED SEALED BY THE COURT.)

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[73]

TORRANCE, CALIFORNIA; TUESDAY, AUGUST 27, 1996

2:00 P.M.

DEPARTMENT
SW "L" HON. ANDREW C. KAUFFMAN, JUDGE

APPEARANCES:

THE DEFENDANT WITH HIS COUNSEL, MARY NACHMAN, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY; GINA SATRIANO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(HERBERT CANNON, OFFICIAL REPORTER.)

(THE PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL AS FOLLOWS:)

THE COURT: I KNOW I HAVE KEPT YOU WAITING NOW A LONG TIME. I APOLOGIZE FOR THAT . WE HAVE HAD SOME TACTICAL DIFFICULTIES WITH SOME OF THE FACILITIES OF THIS COURTROOM AND THE ADJACENT AREAS TODAY. WITHOUT GETTING INTO ANY OF THE DETAILS, SOME OF THE OTHER FACILITIESIN THIS BUILDING ARE CONSISTENT WITH THE FINE ELECTRONIC EQUIPMENT THAT YOU SAW DEMONSTRATED YESTERDAY AND ALSO CONSISTENT WITH THE LUXURIOUS SURROUNDINGS TO WHICH YOU HAVE BECOME ACCUSTOMED IN THE BASEMENT.

WE WERE ABOUT TO SEEK ANOTHER PROSPECTIVE JUROR.

LET'S DO THAT.

[74] THE CLERK: 027.

PROSPECTIVE JUROR 027: MAY I APPROACH THE BENCH?

THE COURT: YES.

(THE FOLLOWING PROCEEDINGS WERE HELD AT THE BENCH:)

PROSPECTIVE JUROR 027: I HAVE PRIOR CONVICTIONS; I THINK IT WOULD BE ALMOST IMPOSSIBLE FOR ME TO BE FAIR AND IMPARTIAL.

THE COURT: ARE THOSE CONVICTIONS FOR DRUG-RELATED OFFENSES?

PROSPECTIVE JUROR 027: YES, THEY ARE.

THE COURT: THANK YOU, SIR, FOR LETTING US KNOW THAT.

YOU ARE EXCUSED.

(THE PROCEEDINGS WERE RESUMED IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL:)

THE CLERK: 028.

THE COURT: GOOD AFTERNOON, 028.

WERE YOU ABLE TO HEAR ALL THE QUESTIONS THAT WERE ASKED YESTERDAY?

PROSPECTIVE JUROR 028: YES.

THE COURT: IF I WERE TO ASK YOU THE SAME QUESTIONS THAT I ASKED THE OTHER PEOPLE OR SUBSTANTIALLY SIMILAR [75] QUESTIONS, DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER FOLKS HAVE?

PROSPECTIVE JUROR 028: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 028: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION THERE ON THE BOARD?

PROSPECTIVE JUROR 028: MY NAME IS 028.

I LIVE IN RANCHO PALOS VERDES. I AM MARRIED WITH TWO CHILDREN. MY OCCUPATION, RETIRED; MY WIFE IS A HOUSEWIFE.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: WHAT WAS YOUR OCCUPATION BEFORE YOU RETIRED?

PROSPECTIVE JUROR 028: SALES MANAGER FOR A COMPUTER COMPANY.

THE COURT: ARE YOUR CHILDREN WORKING?

PROSPECTIVE JUROR 028: YES.

THE COURT: IN WHAT CAPACITY?

PROSPECTIVE JUROR 028: ONE IS IN THE HEALTH INDUSTRY AND THE OTHER ONE IS IN THE TRASH INDUSTRY.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 028: YES.

THE COURT: COULD YOU DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW AND WITHOUT REGARD TO ANY PERSONAL FEELINGS?

[76] PROSPECTIVE JUROR 028: YES.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 028: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 028: NO.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUIROR 028: NO.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 028: NO.

THE COURT: OR BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

PROSPECTIVE JUROR 028: NO.

THE COURT: MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: PASS FOR CAUSE, YOUR HONOR.

THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES, YOUR HONOR.

THE COURT: THE PEREMPTORY CHALLENGE IS WITH THE DEFENSE.

MS. NACHMAN: THE DEFENSE WOULD ASK THE COURT TO THANK AND EXCUSE 014.

THE COURT: 014, THANK YOU, MA'AM, FOR YOUR SERVICE, YOU ARE EXCUSED.

[77] THE CLERK: 029.

THE COURT: GOOD AFTERNOON, 029.

HAVE YOU HEARD ALL OF THE QUESTIONS?

PROSPECTIVE JUROR 029: YES, I HAVE.

THE COURT: IF I WERE TO ASK YOU THE SAME QUESTIONS, DO YOU THINK YOU WOULD ANSWER ANY OF THE QUESTIONS DIFFERENTLY THAN MOST OF THE OTHER FOLKS HAVE?

PROSPECTIVE JUROR 029: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 029: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD?

PROSPECTIVE JUROR 029: ONE QUESTION, YES, SIR. I HAVE FRIENDS WHO ARE POLICE OFFICERS AND I CONVERSE WITH THEM OFTEN.

THE COURT: WHICH AGENCY DO THEY WORK FOR?

PROSPECTIVE JUROR 029: L.A. COUNTY SHERIFF, LAPD.

THE COURT: YOU HAVE TALKED TO THEM FROM TIME TO TIME ABOUT THEIR PROFESSIONAL DUTIES AND EXPERIENCES?

PROSPECTIVE JUROR 029: YES. RIGHT. AND I GENERALLY MEET AN LAPD OFFICER APPROXIMATELY ONCE A MONTH. IT IS JOB RELATED.

I WORK FOR THE CITY OF LOS ANGELES AS A BUILDING INSPECTOR AND I OCCASIONALLY GO TO ABANDONED CRACK HOUSES WITH OFFICERS; WE GO THROUGH OTHER PLACES THAT ARE BEING USED TO DEAL IN.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT ANY OF THESE RELATIONSHIPS OR

EXPERIENCES THAT YOU HAVE HAD [78] ON THE JOB THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 029: I WOULD TRY TO BE FAIR, BUT I DON'T KNOW HOW IMPARTIAL I COULD BE.

THE COURT: I APPRECIATE YOUR LETTING US KNOW THAT.

YOU ARE EXCUSED, 029.

THE CLERK: 030.

THE COURT: MS. 030, GOOD AFTERNOON.

HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 030: YES.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY OF THESE DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 030: NO.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 030: YES.

THE COURT: WOULD YOU GIVE US THE INFORMATION, PLEASE, ON THE BOARD?

PROSPECTIVE JUROR 030: MY NAME IS 030. I LIVE IN RANCHO DOMINGUEZ. I AM MARRIED. I HAVE THREE GROWN CHILDREN. MY OCCUPATION IS SECRETARY.

MY HUSBAND'S OCCUPATION IS A TRUCK DRIVER.

I HAVE HAD ONE PREVIOUS JURY EXPERIENCE ABOUT 25 YEARS AGO.

THE COURT: ON WHAT TYPE OF CASE?

PROSPECTIVE JUROR 030: TRAFFIC.

THE COURT: WAS THE JURY ABLE TO REACH A VERDICT?

PROSPECTIVE JUROR 030: YES.

THE COURT: WOULD YOU SAY YOU HAVE A GOOD MEMORY OF [79] THAT CASE?

PROSPECTIVE JUROR 030: NO. I DON'T REMEMBER IT VERY MUCH.

THE COURT: YOU WOULDN'T HAVE ANY PROBLEM PUTTING IT COMPLETELY ASIDE?

PROSPECTIVE JUROR 030: NO, NO PROBLEM.

THE COURT: ARE YOUR CHILDREN WORKING?

PROSPECTIVE JUROR 030: YES.

THE COURT: IN WHAT CAPACITY?

PROSPECTIVE JUROR 030: MY DAUGHTER WORKS AT A GROCERY STORE.

MY OLDEST SON IS A MACHINIST LIVING IN TEXAS.

MY YOUNGER SON IS AN AUTO MECHANIC IN SACRAMENTO.

THE COURT: YOU DO FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 030: YES.

THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT THERE ARE DRUG DEALERS ACTIVE IN YOUR NEIGHBORHOOD?

PROSPECTIVE JUROR 030: NO.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 030: MY OLDEST SON.

THE COURT: WHAT WAS HIS PARTICULAR PROBLEM?

PROSPECTIVE JUROR 030: COCAINE.

THE COURT: IS THIS A PROBLEM THAT HE HAS SINCE COME TO TERMS WITH?

PROSPECTIVE JUROR 030: YES.

[80] THE COURT: FOR WHAT PERIOD OF TIME DID HE HAVE THIS PROBLEM?

PROSPECTIVE JUROR 030: FROM HIS LATE TEENS UNTIL HE WAS ABOUT 26.

HE WENT INTO A 30-DAY REHAB. HE HAS BEEN CLEAN SINCE.

THE COURT: DURING THE SIX OR SO YEARS THAT YOU HAVE INDICATED HE HAD THIS PROBLEM, WAS HE EVER ARRESTED OR CHARGED WITH ANY CRIME INVOLVING POSSESSION OF COCAINE?

PROSPECTIVE JUROR 030: NOT THAT I KNOW OF, NO.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT YOUR RELATIONSHIP WITH YOUR SON OR ANYTHING ABOUT WHAT HE WENT THROUGH DURING THE PERIOD OF TIME THAT WE ARE TALKING ABOUT THAT YOU THINK MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 030: NO.

THE COURT: YOU COULD BE AS OBJECTIVE ABOUT THIS AS ANY OTHER JURORS?

PROSPECTIVE JUROR 030: YES.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 030: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER ON A PROFESSIONAL LEVEL THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 030: NO.

THE COURT: THANK YOU, MS. 030.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

[81] MS. NACHMAN: PASS FOR CAUSE.

MS. SATRIANO: PASS FOR CAUSE, YOUR HONOR.

THE COURT: THE PEREMPTORY CHALLENGE IS WITH THE PEOPLE.

MS. SATRIANO: THE PEOPLE WOULD ASK THE COURT TO, PLEASE, THANK AND EXCUSE 022.

THE COURT: THANK YOU FOR YOUR SERVICE, 022. YOU ARE EXCUSED.

THE CLERK: 031.

THE COURT: GOOD AFTERNOON, 031.

SIR, HAVE YOU HEARD ALL THE QUESTIONS?

PROSPECTIVE JUROR 031: YES, I HAVE.

THE COURT: DO YOU THINK YOU WOULD ANSWER ANY QUESTION DIFFERENTLY THAN MOST OF THE OTHER JURORS HAVE?

PROSPECTIVE JUROR 031: NO, I DON'T.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 031: YES, I CAN.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD, PLEASE?

PROSPECTIVE JUROR 031: MY NAME IS 031. I LIVE IN MANHATTAN BEACH. I AM MARRIED, NO CHILDREN. I CURRENTLY WORK IN THE TELEVISION

INDUSTRY IN ACCOUNTING AND FINANCE AREA. PREVIOUS TO THAT, I WAS A PUBLIC ACCOUNTANT.

MY WIFE IS AN EMERGENCY ROOM NURSE.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF IN A CRIMINAL CASE?

[82] PROSPECTIVE JUROR 031: YES, I DO.

THE COURT: COULD YOU DECIDE THIS CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW AND WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 031: YES, I COULD.

THE COURT: FOR HOW LONG HAVE YOUR WIFE WORKED IN THE EMERGENCY ROOM?

PROSPECTIVE JUROR 031: FIVE OR SIX YEARS.

THE COURT: HAS SHE EVER TALKED TO YOU ABOUT ANY PATIENTS OR CASES THAT SHE HAS HAD TO DEAL WITH?

PROSPECTIVE JUROR 031: YES, SHE HAS.

THE COURT: HAS SHE EVER DISCUSSED WITH YOU ANY PERSONS WHO ARE BELIEVED TO HAVE OVERDOSED ON DRUGS OR NARCOTICS?

PROSPECTIVE JUROR 031: YES, SHE HAS.

THE COURT: DO YOU THINK THERE IS ANYTHING THAT SHE HAS TOLD YOU ABOUT HER EXPERIENCES THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TYPE OF CASE?

PROSPECTIVE JUROR 031: NO, I DO NOT.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 031: NO.

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER ON A

PROFESSIONAL LEVEL THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVE JUROR 031: NO.

THE COURT: DO YOU THINK THAT POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

[83] PROSPECTIVE JUROR 031: YES.

THE COURT: THANK YOU, 031.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: YES.

THE COURT: MS. SATRIANO, DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES.

THE COURT: THE PEREMPTORY IS WITH THE DEFENSE.

MS. NACHMAN: MAY I HAVE A MOMENT?

THE COURT: YES.

MS. NACHMAN: THE DEFENSE WOULD ACCEPT THE PANEL AS PRESENTLY CONSTITUTED.

MS. SATRIANO: THE PEOPLE ACCEPT THE PANEL AS PRESENTLY CONSTITUTED.

THE CLERK: 032.

THE COURT: GOOD AFTERNOON, MS. 032. YOU ARE ON YOUR SECOND DAY OF JURY SERVICE; HAVE YOU HEARD YOUR JUROR'S HANDBOOK?

PROSPECTIVE JUROR 032: NO, I HAVEN'T, NO.

THE COURT: SOMETIMES I THINK I SHOULD ADVISE JURORS OF THEIR RIGHTS BEFORE I ASK THEM THAT QUESTION.

ARE YOU WONDERING WHY YOU HAVE BEEN ASKED TO COME FORWARD?

PROSPECTIVE JUROR 032: I KNOW I AM AN ALTERNATE.

THE COURT: YOU MAY BE.

ARE YOU FAMILIAR WITH THE DUTIES OF AN ALTERNATE JUROR?

PROSPECTIVE JUROR 032: I HAVE A CONCEPT OF WHAT THE JURY DUTIES ARE AND THAT WOULD BE TO LISTEN TO THE EVIDENCE [84] AND ONLY DELIBERATE IN THE EVENT THAT SOMETHING HAPPENS TO ONE OF THE 12 THAT WERE SEATED.

THE COURT: I GUESS YOU DON'T HAVE TO READ THAT HANDBOOK AT ALL.

ARE YOU WILLING TO SERVE IN THAT CAPACITY?

PROSPECTIVE JUROR 032: YES, I AM.

THE COURT: HAVE YOU HEARD THE QUESTIONS I HAVE ASKED THE OTHER JURORS?

PROSPECTIVE JUROR 032: YES, I HAVE.

THE COURT: IF I WERE TO ASK YOU THE SAME GENERAL QUESTIONS, DO YOU THINK YOU WOULD

ANSWER ANY OF THOSE DIFFERENTLY THAN MOST OF THE OTHER JURORS DID?

PROSPECTIVE JUROR 032: NO, I WOULDN'T.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 032: YES, I CAN.

THE COURT: GIVE US THE ANSWERS TO THE QUESTIONS ON THE BOARD, PLEASE.

PROSPECTIVE JUROR 032: MY NAME IS 032. I RESIDE IN REDONDO BEACH. I AM MARRIED. I HAVE THREE CHILDREN. MY OCCUPATION IS A PRODUCT MANAGER FOR A DATA PROCESSING COMPANY.

MY HUSBAND IS A RESELLER OF LONG DISTANCE TELEPHONE SERVICE.

THE ONLY PRIOR JURY EXPERIENCE I HAD WAS JURY DUTY ON WHICH I SPENT TEN DAYS IN A LOVELY BASEMENT FACILITY HERE SEVERAL YEARS AGO.

I HAVE TWO OLDER CHILDREN THAT ARE WORKING. MY OLDEST SON HAS HIS OWN PAVING COMPANY. MY OTHER SONS WORK [85] FOR A FOOD SERVICE COMPANY.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF IN A CRIMINAL CASE?

PROSPECTIVE JUROR 032: I DO, YES.

THE COURT: IF YOU WOUND UP BEING ONE OF THE JURORS ACTUALLY DELIBERATING ON THIS CASE, COULD YOU DECIDE THE CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 032: YES, I COULD.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 032: NO, I DON'T .

THE COURT: HAVE YOU EVER HAD AN EXPERIENCE WITH A POLICE OFFICER THAT YOU WOULD SAY WAS PARTICULARLY POSITIVE OR PARTICULARLY NEGATIVE?

PROSPECTIVEJ JUROR 032: NO, I HAVEN'T.

THE COURT: DO YOU THINK THAT THE POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 032: YES, I DO.

THE COURT: HAVE YOU OR ANYBODY CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 032: NOT WITH DRUGS, BUT CERTAINLY WITH ALCOHOL.

THE COURT: YOU OR SOME OTHER PERSON?

PROSPECTIVE JUROR 032: FAMILY, RELATIVES.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT ANY OF THE EXPERIENCES THAT YOU HAVE

HAD WITH THEM OR ANYTHING [86] ABOUT THE RELATIONSHIP THAT YOU HAVE HAD WITH THEM THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 032: NO, I DON'T.

THE COURT: HAVE ANY OF THESE PEOPLE THAT YOU MENTIONED EVER BEEN ACCUSED OF COMMITTING ANY CRIME WHILE UNDER THE INFLUENCE OF ALCOHOL?

PROSPECTIVE JUROR 032: MY EX-HUSBAND WAS ARRESTED FOR DRUNK DRIVING.

THE COURT: DO YOU THINK THERE IS ANYTHING ABOUT YOUR KNOWLEDGE OF THAT INCIDENT THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 032: NO.

THE COURT: THANK YOU, MS. 032.

MS. NACHMAN, DO YOU PASS FOR CAUSE?

MS. NACHMAN: YES.

THE COURT: MS. SATRIANO. DO YOU PASS FOR CAUSE?

MS. SATRIANO: YES, YOUR HONOR.

THE PEOPLE ACCEPT THE ALTERNATE.

MS. NACHMAN: THE DEFENSE WOULD ASK THE COURT TO THANK AND EXCUSE MS. 032.

THE COURT: THANK YOU FOR YOUR SERVICES, MS. 032. YOU ARE EXCUSED.

THE CLERK: 033.

THE COURT: GOOD AFTERNOON, MS. 033.

ARE YOU WILLING TO SERVE AS AN ALTERNATE JUROR IN THIS CASE?

PROSPECTIVE JUROR 033: YES, I AM.

THE COURT: DID YOU HEAR ALL THE QUESTIONS THAT WERE [87] ASKED OF THE 12 REGULAR JURORS?

PROSPECTIVE JUROR 033: YES.

THE COURT: WOULD YOUR ANSWERS TO THOSE QUESTIONS BE ANY DIFFERENT THAN MOST OF THE OTHER JURORS HAVE GIVEN?

PROSPECTIVE JUROR 033: NO, THEY WOULDN'T.

THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR 033: YES, I CAN.

THE COURT: WOULD YOU GIVE US THE INFORMATION ON THE BOARD?

PROSPECTIVE JUROR 033: I LIVE IN HERMOSA BEACH. I AM DIVORCED. I HAVE ONE GROWN SON. I WORK AS AN INTERNATIONAL ADMINISTRATOR.

MY SON IS A SYSTEMS ENGINEER.

I HAVE NO PRIOR JURY EXPERIENCE.

THE COURT: DO YOU FEEL THAT YOU UNDERSTAND THE CONCEPT OF THE PRESUMPTION OF INNOCENCE AND THE BURDEN OF PROOF?

PROSPECTIVE JUROR 033: YES, I DO.

THE COURT: IF YOU WOUND UP BEING ONE OF THE 12 JURORS DELIBERATING ON THIS CASE, WOULD YOU BE ABLE TO DECIDE THE CASE SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS OF LAW WITHOUT REGARD TO ANY PERSONAL FEELINGS?

PROSPECTIVE JUROR 033: YES, I WOULD.

THE COURT: DO YOU HAVE ANY RELATIVES OR CLOSE FRIENDS IN LAW ENFORCEMENT?

PROSPECTIVE JUROR 033: MY NIECE HAS A SON WHO IS GOING TO BE A SHERIFF.

THE COURT: IS THIS SOMEBODY THAT YOU SEE YOURSELF [88] FREQUENTLY?

PROSPECTIVE JUROR 033: NO. I SEE HIM PROBABLY THREE TIMES IN FIVE YEARS.

THE COURT: HAS HE EVER TALKED TO YOU ABOUT ANY OF HIS PROFESSIONAL DUTIES OR EXPERIENCES?

PROSPECTIVE JUROR 033: NO.

THE COURT: DO YOU TIHNK THERE IS ANYTHING ABOUT WHAT YOU HAVE TALKED ABOUT THAT MIGHT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN A CRIMINAL CASE?

PROSPECTIVE JUROR 033: NO.

THE COURT: OR TO OBJECTIVELY EVALUATE THE TESTIMONY OF A POLICE OFFICER?

PROSPECTIVE JUROR 033: NO.

THE COURT: DO YOU THINK THAT THE POSSESSION OF ROCK COCAINE OUGHT TO BE AGAINST THE LAW?

PROSPECTIVE JUROR 033: YES.

THE COURT: HAVE YOU OR ANYONE CLOSE TO YOU EVER HAD A PROBLEM WITH DRUG OR ALCOHOL ABUSE?

PROSPECTIVE JUROR 033: NO.

THE COURT: OR BEEN ACCUSED OF COMMITTING ANY CRIME THAT INVOLVED THE USE OR POSSESSION OF DRUGS OR DRUG PARAPHERNALIA?

PROSPECTIVE JUROR 033: NO.

THE COURT: THANK YOU.

MS. NACHMAN: DO YOU PASS FOR CAUSE?

MS. NACHMAN: PASS FOR CAUSE, YOUR HONOR.

MS. SATRIANO: PASS FOR CAUSE, YOUR HONOR.

THE COURT: THE PEREMPTORY IS WITH THE PEOPLE.

[89] MS. SATRIANO: THE PEOPLE ACCEPT THE ALTERNATE.

THE COURT: IF YOU WILL ALL RISE, PLEASE.

(THE JURY WAS SWORN BY THE CLERK TO TRY THE CAUSE.)

THE COURT: THE BALANCE OF THE PANEL IS EXCUSED AND DIRECTED TO RETURN TO THE JURY ASSEMBLY ROOM.

THANK YOU FOR PARTICIPATING IN THIS PROCESS.